

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHAWEZI MWANTEMBE, et al : CIVIL ACTION

:

vs.

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:

TD BANK, NA, et al : 2:09-cv-00135-TJS

— — —

Thursday, April 1, 2010

— — —

Oral Deposition of LISE L.
MONCILovich, pursuant to Notice, taken in the
offices of Pepper Hamilton, 3000 Two Logan Square,
18th and Arch Streets, Philadelphia, Pennsylvania,
commencing at 11:21 a.m., before Francine K.
Guokas, R.P.R., Notary Public.

— — —

FRANCINE K. GUOKAS

COURT REPORTING

7 Galena Court

Erial, NJ 08081

(215) 726-8855

(856) 782-1640

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| Page 2 | Page 4 |
| 1 APPEARANCES: | 1 EXHIBITS (Continued) |
| 2 SILVERMAN & FODERA | 2 |
| 3 BY: MICHAEL P. LALLI, ESQ. | 3 NO. DESCRIPTION PAGE |
| 4 26th Floor | 4 Plaintiffs' Exhibit Moncilioch-5 95 |
| 5 11 Penn Center Plaza | 5 Documents Bates-stamped number TD001029 through |
| 6 1835 Market Street | 6 TD001031, consisting of 3 pages |
| 7 Philadelphia, Pennsylvania 19103 | 7 |
| 8 | 8 DOCUMENT/INFORMATION REQUEST: None. |
| 9 | 9 |
| 10 Counsel For Defendants | 10 |
| 11 | 11 |
| 12 | 12 |
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| 24 | 24 |
| Page 3 | Page 5 |
| 1 INDEX | 1 |
| 2 | 2 (It was agreed by and among |
| 3 WITNESS PAGE | 3 counsel that all objections, except as to |
| 4 LISE L. MONCILovich | 4 the form of the question, are reserved |
| 5 By Mr. Lalli 7 | 5 until the time of trial.) |
| 6 By Mr. Harvey 113 | 6 |
| 7 | 7 |
| 8 | 8 |
| 9 | 9 |
| 10 EXHIBITS | 10 |
| 11 | 11 |
| 12 NO. DESCRIPTION PAGE | 12 |
| 13 Plaintiffs' Exhibit Moncilioch-1 46 | 13 |
| 14 Documents Bates-stamped number TD001194 through | 14 |
| 15 TD001197, consisting of 4 pages | 15 |
| 16 | 16 |
| 17 Plaintiffs' Exhibit Moncilioch-2 70 | 17 |
| 18 Document Bates-stamped number TD000249, consisting | 18 |
| 19 of 1 page | 19 |
| 20 | 20 |
| 21 Plaintiffs' Exhibit Moncilioch-3 78 | 21 |
| 22 Document Bates-stamped number TD000713, consisting | 22 |
| 23 of 1 page | 23 |
| 24 | 24 |

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| <p>Page 6</p> <p>1 to you in advance of this deposition to 2 facilitate your examination of this 3 witness. So that if you have any questions 4 about this, now is your time to ask it. If 5 you -- I would have liked to have gotten it 6 to you last night so you would have had 7 additional time, but I had that additional 8 document that I had to get before I 9 finalized it.</p> <p>10 If you would like additional 11 time to review this, we're willing to give 12 you that time and sit and, you know, let 13 you review it and start the deposition in 14 an hour or whenever today, but we'd like to 15 get the deposition done today. So that's 16 my preliminary statement.</p> <p>17 MR. LALLI: Sure. I don't 18 think I'm going to need more time. I'll 19 break before we end and -- I'm not sure if 20 you want to break for lunch or... I don't 21 think I'm going to have a lot.</p> <p>22 MR. HARVEY: Okay.</p> <p>23 MR. LALLI: So we may not need 24 to break for lunch. But from what I've</p> | <p>Page 8</p> <p>1 You were just put under oath by 2 the court reporter. That's the same oath that you 3 would be given in a court of law, so your 4 testimony today should be given with the same 5 effect as though it were given in a court of law. 6 Is that okay?</p> <p>7 A. Yes.</p> <p>8 Q. I'm going to go over a few ground 9 rules just to make this go a little bit more 10 smoothly. And as I said, Mr. Harvey may have 11 already gone through these with you. Please 12 answer all of my questions verbally; no shrugs of 13 the shoulder, or nods of the head, or uh-huhs or 14 unh-unhs, because everything is being taken down. 15 So it's much easier to take down a yes than it is 16 to take down an uh-huh. Is that okay?</p> <p>17 A. Absolutely.</p> <p>18 Q. I'm going to ask that you wait until 19 I finish asking my question before you begin 20 answering. That way, the court reporter has a 21 chance to take down my complete question and your 22 complete answer. Is that okay?</p> <p>23 A. Yes.</p> <p>24 Q. And I'll give you -- I'll try to give</p> |
| <p>Page 7</p> <p>1 seen so far, I don't know that I'm going to 2 need more time other than the questions I'm 3 going to ask about it.</p> <p>4 ---</p> <p>5 LISE L. MONCILOVICH, having 6 been duly sworn, was examined and testified 7 as follows:</p> <p>8 BY MR. LALLI:</p> <p>9 Q. Good morning, Mrs. Monciovich.</p> <p>10 A. Good morning.</p> <p>11 Q. How are you today?</p> <p>12 A. Good, thank you.</p> <p>13 Q. We just met about two minutes ago; my 14 name is Mike Lalli. I'm one of the attorneys for 15 the plaintiffs in this litigation. We're here 16 today for your deposition. Have you ever been 17 deposed before?</p> <p>18 A. No.</p> <p>19 Q. So this is your first time?</p> <p>20 A. I'm a virgin.</p> <p>21 Q. Okay. I'm sure Mr. Harvey went over 22 this with you, but a deposition is just our 23 opportunity to ask you questions, see what you 24 know, and go through some of these documents.</p> | <p>Page 9</p> <p>1 you the same courtesy.</p> <p>2 If you don't understand a 3 question I ask, please tell me you don't 4 understand it. I'm not good at forming sentences, 5 so if you don't understand it, let me know. If 6 you do understand it -- if you do answer the 7 question, I'm going to assume that you heard it 8 and that you understood it and that you're 9 answering it to the best of your knowledge. Is 10 that -- are those fair assumptions for me to make?</p> <p>11 A. Yes.</p> <p>12 Q. If you need to take a break at any 13 time, let me know. The only caveat to that is 14 that if there's a question pending, I'm going to 15 ask you to answer the question, and then you can 16 take your break.</p> <p>17 Do you have any questions about 18 those rules I just went over?</p> <p>19 A. Not so far.</p> <p>20 Q. Okay. Can you please state your name 21 and business address for the record.</p> <p>22 A. Lise Monciovich, at 9000 Atrium Way, 23 and that is in Mount Laurel, New Jersey.</p> <p>24 Q. And you understand you've been</p> |

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| <p>1 designated to testify on behalf of TD Bank today?</p> <p>2 A. Correct.</p> <p>3 Q. What did you do to prepare for this</p> <p>4 deposition?</p> <p>5 A. I have researched with a number of</p> <p>6 coworkers, some outside vendors in order to gather</p> <p>7 materials for the deposition and the booklet that</p> <p>8 was put together as well as go through my own</p> <p>9 files to research what I had in them from that</p> <p>10 time period for the gift card program.</p> <p>11 Q. Anything else? Other than</p> <p>12 conversations --</p> <p>13 A. Other than conversations, yeah, with</p> <p>14 counsel, no.</p> <p>15 Q. You said you spoke with or got</p> <p>16 together with coworkers.</p> <p>17 A. Uh-huh.</p> <p>18 Q. Who were those coworkers?</p> <p>19 A. Joan Dare for newspaper advertising.</p> <p>20 Q. Can you spell the name for me,</p> <p>21 please?</p> <p>22 A. D-A-R-E.</p> <p>23 Q. And it's Joan?</p> <p>24 A. Joan, J-O-A-N.</p> | <p>1 about that conversation. What was --</p> <p>2 A. It was very brief. It was just for</p> <p>3 her to gather information relative to what kind of</p> <p>4 newspaper advertising had gone on during the --</p> <p>5 for the gift card program, itself. Since Joan was</p> <p>6 our media manager for Commerce Bank, she worked</p> <p>7 directly with the agency who had put the ads</p> <p>8 together. So they needed to provide that</p> <p>9 information to me.</p> <p>10 Q. If I understand it correctly, you</p> <p>11 just spoke with Joan and said, "Hey, I need some</p> <p>12 documents, can you give them to me?"</p> <p>13 A. Uh-huh.</p> <p>14 Q. Was that the extent of it?</p> <p>15 A. Basically.</p> <p>16 Q. What about Mrs. Bradley or</p> <p>17 Ms. Bradley?</p> <p>18 A. Same thing. She was more involved</p> <p>19 from the card perspective, so I approached her</p> <p>20 with requesting any kind of actual proofs from</p> <p>21 manufacturers of the cards.</p> <p>22 Q. And Leigh Fulda?</p> <p>23 A. Leigh is the project manager, and</p> <p>24 she -- I went through her pieces that she had</p> |
| <p style="text-align: center;">Page 11</p> <p>1 Q. Okay.</p> <p>2 A. I had also gathered information from</p> <p>3 Karen Bradley; K-A-R-E-N, B-R-A-D-L-E-Y.</p> <p>4 Q. What is Ms. Bradley's position?</p> <p>5 A. She is no longer with the bank, but</p> <p>6 she worked in card production. I'm not exactly</p> <p>7 sure what her title was and to what extent, but</p> <p>8 she was involved with the card program.</p> <p>9 Q. Okay. Who else?</p> <p>10 A. I spoke with Leigh Fulda, L-E-I-G-H,</p> <p>11 F-U-L-D-A, who worked, prior to the merger, with</p> <p>12 TD Banknorth to go through the collateral that</p> <p>13 Banknorth had presented.</p> <p>14 Q. When you say collateral, what does</p> <p>15 that mean?</p> <p>16 A. Just the samples of materials that</p> <p>17 they had provided for this deposition.</p> <p>18 Q. Samples of materials meaning</p> <p>19 advertisements?</p> <p>20 A. It could have been signage for</p> <p>21 posters, various other printed materials.</p> <p>22 Q. Okay. Anyone else?</p> <p>23 A. Not that I can think of offhand, no.</p> <p>24 Q. Your conversation with Joan, tell me</p> | <p style="text-align: center;">Page 13</p> <p>1 supplied to make sure I understand exactly what</p> <p>2 they were and could attest to them.</p> <p>3 Q. What was Leigh's position?</p> <p>4 A. She's a project manager currently.</p> <p>5 Q. What does that mean?</p> <p>6 A. She will coordinate the various</p> <p>7 elements for a program. For instance, she may</p> <p>8 coordinate all the content and creative</p> <p>9 development for a line of business that wants to</p> <p>10 develop some promotional materials.</p> <p>11 Q. You spoke with some coworkers. You</p> <p>12 also got in touch with some outside vendors.</p> <p>13 A. Correct.</p> <p>14 Q. Okay. Who are the outside vendors</p> <p>15 you contacted?</p> <p>16 A. I had contacted Capital Printing.</p> <p>17 Q. And what is Capital Printing?</p> <p>18 A. They are the printers that produced</p> <p>19 most of the gift -- greeting cards for us with the</p> <p>20 terms and conditions in it.</p> <p>21 Q. When you say the greeting cards, do</p> <p>22 you mean the trifold, what we've been describing</p> <p>23 as a trifold --</p> <p>24 A. Right.</p> |

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| <p>1 Q. -- that is included in the box?</p> <p>2 A. In the box, correct.</p> <p>3 Q. So Capital Printing is the company</p> <p>4 that TD Bank used or Commerce?</p> <p>5 A. Commerce. And TD Bank also uses</p> <p>6 today.</p> <p>7 Q. When did Commerce start using Capital</p> <p>8 Printing?</p> <p>9 A. He was already being used prior to my</p> <p>10 involvement, but relative to the gift card program</p> <p>11 it would have been when we first produced the</p> <p>12 first piece in 2004.</p> <p>13 Q. So Capital Printing produced the</p> <p>14 trifold and the terms and conditions?</p> <p>15 A. Yes, they're one and the same.</p> <p>16 Q. Anything else that they produced?</p> <p>17 A. Relative to the gift card program?</p> <p>18 Q. Yes.</p> <p>19 A. Not that I can think of offhand,</p> <p>20 because we would bid out work so -- not that I</p> <p>21 remember.</p> <p>22 Q. Who did you contact at Capital</p> <p>23 Printing?</p> <p>24 A. Our account executive, who is Jeff,</p> | <p>1 card manufacturer for the first hologram card that</p> <p>2 was produced.</p> <p>3 Q. When you say the first hologram card,</p> <p>4 what does that mean?</p> <p>5 A. It's an effect card. The hologram</p> <p>6 has a very dimensional look to it, that started in</p> <p>7 2007, and it just is a special process, it just</p> <p>8 gives the card a different look.</p> <p>9 Q. So you're just talking about the</p> <p>10 actual look of the card?</p> <p>11 A. Correct.</p> <p>12 Q. And did you contact Perfect Plastic</p> <p>13 for the same reasons you've contacted these other</p> <p>14 people we've been speaking of, to get documents or</p> <p>15 get proofs?</p> <p>16 A. Yes, to get documents -- well, proofs</p> <p>17 in this instance.</p> <p>18 Q. Who at Perfect Plastic did you speak</p> <p>19 with?</p> <p>20 A. His name is Jim Fitzmorris. I</p> <p>21 believe it's F-I-T-Z-M-O-R-R-I-S.</p> <p>22 Q. And did Perfect Plastic have records</p> <p>23 that dated -- well, you said the first time you</p> <p>24 guys used them was 2007?</p> |
| <p style="text-align: center;">Page 15</p> <p>1 now don't ask me to spell the last name, it's</p> <p>2 Augerbauer. I think it's A-U-G-E-R-B-A-U-E-R.</p> <p>3 Something close to that.</p> <p>4 Q. And what did your conversation with</p> <p>5 Mr. Augerbauer entail?</p> <p>6 A. Primarily just to go into the</p> <p>7 previous job jackets to see if they had samples of</p> <p>8 pieces printed, because my files may not have had</p> <p>9 samples from way back then at this particular</p> <p>10 time, and also to gather some PDFs of the final</p> <p>11 file -- of the final proofs before we went to</p> <p>12 print for those terms and conditions and</p> <p>13 gift cards.</p> <p>14 Q. So Capital Printing keeps...</p> <p>15 A. They keep records.</p> <p>16 Q. And they have --</p> <p>17 A. For the most part, yeah. They only</p> <p>18 go back for so many years, but they were able to</p> <p>19 help.</p> <p>20 Q. Do they go back to 2004?</p> <p>21 A. He did have some.</p> <p>22 Q. Besides Capital Printing, what other</p> <p>23 vendors did you speak with?</p> <p>24 A. I spoke with Perfect Plastic who is a</p> | <p style="text-align: center;">Page 17</p> <p>1 A. As far as I know, it was 2007. I</p> <p>2 know they were used for this particular card,</p> <p>3 yeah.</p> <p>4 Q. What other outside vendors did you</p> <p>5 speak with or contact?</p> <p>6 A. That was primarily it.</p> <p>7 Q. Primarily it or...</p> <p>8 A. I don't recall anybody else, offhand,</p> <p>9 that I would have talked to.</p> <p>10 Q. Okay. Another thing you did to</p> <p>11 prepare was to look through your own files?</p> <p>12 A. Correct.</p> <p>13 Q. Tell me what that means.</p> <p>14 A. Files that had been archived. I</p> <p>15 would have kept files for various items that would</p> <p>16 have been developed throughout the years that I</p> <p>17 would have been involved in, so I just retrieved</p> <p>18 those from archives and searched through to see</p> <p>19 what samples I had.</p> <p>20 Q. When you say they're archived files,</p> <p>21 do you mean they're physical boxes of files or are</p> <p>22 they computer files?</p> <p>23 A. Physical boxes of files.</p> <p>24 Q. Where are they located?</p> |

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| <p>Page 18</p> <p>1 A. They were at Iron Mountain, that big 2 storage facility we use. 3 Do you use them, also? 4 Q. Yes, we do. 5 A. Everybody knows Iron Mountain. 6 Q. So you just called back from storage? 7 A. We would have had to call them back. 8 I have sort of listing of jobs by number, our own 9 job number, and I would have pulled anything that 10 was relative to the gift card program. 11 Q. Other than the actual physical files 12 you called back from Iron Mountain, did you go 13 through any of your files that are located in your 14 office? 15 A. Uh-huh, because I still have a 16 certain number of files from -- that we haven't 17 put into archive. 18 Q. And I'm speaking of physical files. 19 Is that answer the same? Not just computer. 20 A. Correct. Yes. 21 Q. And did you also go through your 22 computer files? 23 A. Uh-huh. 24 Yes.</p> | <p>Page 20</p> <p>1 A. I don't recall. 2 Q. Do you know what the email said? 3 A. Not word for word, but other than 4 primarily that there was a lawsuit pending and to 5 maintain all files as accurately and as best as we 6 can. 7 Q. And did you follow the, I guess, 8 instruction of that email? 9 A. Uh-huh. 10 Q. You didn't -- 11 A. We didn't throw anything out. We 12 didn't rip anything up. 13 Q. You didn't take all your boxes to the 14 shredder? 15 A. No. No. 16 Q. And did you produce documents to your 17 counsel in response to that email or to someone 18 else in response to that email? 19 A. When it was asked of me -- 20 MR. HARVEY: I'm going to 21 object to the form of the question. 22 BY MR. LALLI: 23 Q. If you understand the question, you 24 can still answer it.</p> |
| <p>Page 19</p> <p>1 Q. I should have caught you, I'm sorry. 2 It's almost like a real 3 conversation. 4 A. I know. 5 Q. When did you first hear about this 6 lawsuit? 7 A. I have to approximate that it was the 8 end of last year. 9 Q. 2009? 10 A. Yes. 11 MR. HARVEY: I'm going to point 12 out that that's almost certainly not a 13 correct answer. 14 THE WITNESS: I'm trying to 15 think of when I had gotten an email. 16 Because I pulled information starting 17 January of '09, so it would have been 18 around December, January of '09 -- I mean 19 December of '08, January of '09, yeah. 20 BY MR. LALLI: 21 Q. You got word of this lawsuit through 22 an email? 23 A. Correct. 24 Q. Who was that email from?</p> | <p>Page 21</p> <p>1 A. If somebody had requested 2 information, whether it was counsel or whether it 3 was somebody else within the program, I would have 4 provided that information. 5 Q. Other than speaking with your counsel 6 and the people we've already named, did you speak 7 with anyone else about this deposition? 8 A. No. 9 Q. Did you speak with anyone other than 10 your counsel about this litigation? 11 A. Relative to -- just in discussion 12 about the facts of the case or -- 13 Q. Sure. 14 A. -- just having the litigation? 15 Q. Both. Any and all. 16 A. Well, I would have mentioned to 17 people that I was being deposed for this, but I 18 would not have gone into the specifics of the 19 case. 20 Q. So for this deposition you may have 21 said, "Hey, on April 1st I'm going to be at a 22 deposition?" 23 A. Yes. 24 Q. Okay. Other than this deposition --</p> |

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| <p>1 I'm talking generally about the litigation, 2 itself -- 3 A. Uh-huh. 4 Q. -- who did you speak with other than 5 counsel about the litigation? 6 A. No one else. 7 Q. No discussions with any coworkers 8 about, "Hey, you know, we're getting sued, what's 9 this all about?" 10 A. No. 11 Q. Or anything to that effect? 12 A. Not that I recall, no. 13 Q. Any conversations with friends or 14 family about it? 15 A. Other than I was just being deposed 16 for this case? No. 17 Q. But nothing about the litigation, 18 itself, or the allegations that have been made 19 against TD Bank? 20 A. No, because actually I didn't know 21 what the allegations were relative to in the 22 beginning. 23 Q. What do you understand them to be 24 now?</p> | <p>1 I'm sorry, yes. 2 Q. With a degree in? 3 A. Bachelor of music. 4 Q. Any formal education after Eastman? 5 A. I had taken some classes at New York 6 University and the University of Wyoming. 7 Q. Did you obtain degrees from New York 8 University or University of Wyoming? 9 A. No. 10 Q. Is the bachelor of -- in music? 11 A. Of music. 12 Q. Is that your only degree? 13 A. Bachelor's degree, yes. 14 Q. Any other degrees after that? 15 A. No. 16 Q. When did you begin working for 17 Commerce Bank? 18 A. I was with Commerce Bank in 1996 to 19 '97 for a year, and then returned in 2002. 20 Q. From '97 to 2002, where were you or 21 what were you doing? 22 A. I worked at another company, at 23 KM Lists. And then I had taken three years off to 24 have my son.</p> |
| <p>1 Page 23 2 A. Relative to the fees? 3 MR. HARVEY: I'm going to 4 object. She can provide that information 5 if she can do it without relating whatever 6 counsel told her. 6 BY MR. LALLI: 7 Q. What you know about the allegations 8 came from counsel. Is that fair? 9 A. I think that's fair. 10 Q. You didn't read any of the pleadings 11 in this matter? 12 A. No. 13 Q. Okay. And other than the documents 14 that were provided to you pursuant to your 15 requests to the coworkers and outside vendors and 16 your own files, did you review any other documents 17 in preparation for this deposition? 18 A. No. 19 Q. Where did you go to college? 20 A. Eastman School of Music, part of the 21 University of Rochester. 22 Q. Did you graduate from Eastman School 23 of Music? 24 A. Uh-huh.</p> | <p>1 Page 25 2 Q. Your stint with Commerce from '96 to 3 '97, let me focus in on that. What was your -- 3 were those dates correct or incorrect? 4 A. '96 to '97, uh-huh. 5 Q. What was your position with Commerce? 6 A. I don't remember the actual title, 7 but I believe it was an advertising coordinator. 8 Q. And as advertising coordinator, what 9 were your roles, responsibilities, duties? 10 A. Too many. 11 Basically I would work with a 12 number of lines of business to coordinate the 13 development of promotional materials, so it could 14 range anywhere from brochures to letters to store 15 fliers, posters, could be newspaper ads, working 16 with the agency. It was a compilation of many 17 different things. 18 Q. When you say you would coordinate 19 these ads, were you actually creating these 20 advertisements? 21 A. I was not designing them, no. It 22 would have been the agency that would have handled 23 that. 24 Q. So I guess run me through the</p> |

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| <p>Page 26</p> <p>1 process, because I'm just not sure how it works. 2 A. Uh-huh. 3 Q. You get a request from someone at the 4 bank -- 5 A. Right. 6 Q. -- saying, "We want advertisements or 7 marketing or promotional materials for this 8 project." 9 A. The particular project. 10 Q. Okay. And then what do you do in 11 response to that? And we'll just stick right now 12 with your '96 to '97. 13 A. Okay. As best as I can remember back 14 then, I would have asked them to provide me with 15 information that they wanted to include. 16 Q. When you say "them," do you mean 17 the -- 18 A. Whatever line of business or internal 19 client it would have been. 20 Q. Okay. 21 A. So taking insurance as an example, if 22 the insurance group had come and said, "We want to 23 develop a brochure," I would have asked them what 24 kind of content, what are the key points that they</p> | <p>Page 28</p> <p>1 marketing for their final approvals, as well. 2 Q. Did you at all have a hand in the 3 approval process back then in '96 and '97? 4 A. No. Not final approval, no. 5 Q. Would you ever make suggestions or 6 edits at all to any of the materials that were 7 provided back to you from the ad agency? 8 A. I may have made suggestions to the 9 client to word something, you know, a little 10 clearer or a little simpler, but it wouldn't have 11 been made had they not approved it. 12 Q. So then you leave Commerce and you go 13 to KM Lists. What is KM Lists? 14 A. They're a list company. 15 Q. What's a list company? 16 A. They provide lists for mailings for a 17 lot of direct marketing groups that do mass 18 mailings. 19 Q. What was your position at KM Lists? 20 A. Primarily I worked with gathering the 21 lists, assembling some of the work orders that 22 would come through from various clients, whether 23 it be a university or a doctor's office or whoever 24 their client list was, and process the list</p> |
| <p>Page 27</p> <p>1 want to put into this piece, or do they have any 2 other special requests, do they want a business 3 card holder put into the piece, what is it going 4 to be used for, is it a sales tool, do they have a 5 particular size in mind. 6 So I would have gotten as many 7 specifics up front as I could, and then relayed 8 that to our agency, who then would have fine-tuned 9 it and come up with a design and layout for it. 10 Q. So they produced that design and 11 layout, they being the advertising agency -- 12 A. Correct. 13 Q. -- produced that design and layout to 14 you? 15 A. Provided it back to me. 16 Q. Okay. 17 A. And then, in turn, I would traffic it 18 through to the person who initially requested it 19 for their review, and obviously if there were 20 edits to be made or changes to be made, we would 21 always follow through. And it would also be 22 reviewed by my supervisor, who was -- who was it 23 at that time -- it was Linda McKenna was the 24 advertising manager, and sometimes our director of</p> | <p>Page 29</p> <p>1 through. And process the list meaning I would 2 gather the information and then provide the list 3 back to them. 4 Q. After leaving KM Lists, was your 5 first position back at Commerce? 6 A. No, it was not. I totally forgot. I 7 was trying to remember my years. I worked at a 8 company called CMEinfo. 9 Q. CMEinfo? 10 A. Correct. And they were a medical -- 11 oh, go ahead. 12 Q. Let me ask you a question. What was 13 the time period during which you worked at 14 KM Lists? 15 A. That was only -- I didn't return 16 after my pregnancy, and I found out I was pregnant 17 just when I started the job, so it would have been 18 less than a year. 19 Q. Can you tell me when you stopped, if 20 you can remember? 21 A. I don't recall the exact date. 22 Q. But it was sometime prior to your 23 pregnancy? 24 A. It had to be prior to delivery, which</p> |

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| <p>1 was in October, so it would had to have been in...</p> <p>2 Q. October of what?</p> <p>3 A. '97.</p> <p>4 Q. Okay. That's good enough for me.</p> <p>5 A. Okay.</p> <p>6 Q. So then you took a few years off?</p> <p>7 A. Yes.</p> <p>8 Q. And then you started at CMEinfo?</p> <p>9 A. Uh-huh.</p> <p>10 Q. When did you start at CMEinfo?</p> <p>11 A. I believe it was around 2000. It</p> <p>12 would be around 2000. I don't know the exact</p> <p>13 date.</p> <p>14 Q. That's fine. What is CMEinfo?</p> <p>15 A. They're a medical education company.</p> <p>16 They work with --</p> <p>17 Q. CME, continuing medical education?</p> <p>18 A. Correct, there you go.</p> <p>19 Q. Sorry. My wife's a doctor; I should</p> <p>20 have known that.</p> <p>21 A. Oh, really?</p> <p>22 Q. Yeah. Did you just help with</p> <p>23 marketing with them, as well?</p> <p>24 A. Marketing, right. They primarily did</p> | <p>1 tchotchkes? The giveaways, you know, the</p> <p>2 specialty items that were used for either customer</p> <p>3 promotions or some internal promotion giveaway.</p> <p>4 Q. Like the little TD Bank free piggy</p> <p>5 bank that you can -- that I've seen around my</p> <p>6 office?</p> <p>7 A. The little TD Bank -- the coin banks?</p> <p>8 Q. Yes. Yes.</p> <p>9 A. Yes. I didn't work on that, but</p> <p>10 something along those lines.</p> <p>11 Q. Something along those lines.</p> <p>12 Now, you said you investigate?</p> <p>13 A. Well, we would research what items</p> <p>14 are out there. There are promotional companies</p> <p>15 that have various items.</p> <p>16 Q. Okay.</p> <p>17 A. We would go to T shirt companies to</p> <p>18 see what kind of T shirts they have. We would go</p> <p>19 to bag companies and see what kind of bags they</p> <p>20 have. So it would be research in the sense that</p> <p>21 we would see what's available out there for a</p> <p>22 particular cost, particular quality, particular</p> <p>23 colors.</p> <p>24 Q. Other than the little tchotchkes,</p> |
| <p style="text-align: center;">Page 31</p> <p>1 a lot of direct marketing projects since they</p> <p>2 would promote their taped classes that they</p> <p>3 videotaped, say, through the Mayo Clinic and</p> <p>4 various other established medical organizations.</p> <p>5 Q. Did you work for anyone in between</p> <p>6 CME and being back at Commerce?</p> <p>7 A. No.</p> <p>8 Q. So you started back in Commerce at --</p> <p>9 in 2002?</p> <p>10 A. Uh-huh.</p> <p>11 Yes.</p> <p>12 Q. I'm just as bad as you are.</p> <p>13 What was your position at</p> <p>14 Commerce in 2002?</p> <p>15 A. I started in ad specialties. I would</p> <p>16 have been an ad specialties manager I believe the</p> <p>17 title was called.</p> <p>18 Q. What does an ad specialties manager</p> <p>19 do?</p> <p>20 A. I would investigate and research and</p> <p>21 develop what you call the little tchotchkes, the</p> <p>22 bags...</p> <p>23 Q. I don't call them little tchotchkes.</p> <p>24 A. You don't call them little</p> | <p style="text-align: center;">Page 33</p> <p>1 what other projects or what other items would you</p> <p>2 have worked on as ad specialties manager?</p> <p>3 A. That would have been primarily my</p> <p>4 role since that's what it was focused on.</p> <p>5 Q. So no advertisements, no --</p> <p>6 A. No.</p> <p>7 Q. Okay. No press releases?</p> <p>8 A. No.</p> <p>9 Q. None of that stuff?</p> <p>10 A. No.</p> <p>11 Q. Okay. How long were you the ad</p> <p>12 specialties manager at Commerce?</p> <p>13 A. I want to -- as I recall, it was a</p> <p>14 year, and then I transferred to -- still within</p> <p>15 marketing, I took over for someone's position,</p> <p>16 they had asked me to take over the sales promotion</p> <p>17 manager position.</p> <p>18 Q. So you became sales promotion manager</p> <p>19 sometime in 2003?</p> <p>20 A. Yes.</p> <p>21 Q. As sales promotion manager what were</p> <p>22 your roles and responsibilities?</p> <p>23 A. It actually went back to more of the</p> <p>24 advertising and marketing role; working with</p> |

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| <p>Page 34</p> <p>1 various lines of business, coordinating the 2 different elements to produce promotional 3 collateral again. So it was very much what I had 4 done earlier in '96.</p> <p>5 Q. How long were you the sales promotion 6 manager?</p> <p>7 A. I still am to some degree, the title 8 has just changed with the merger.</p> <p>9 Q. So your duties today --</p> <p>10 A. My duties today are more focused in 11 on print production and merchandising.</p> <p>12 Q. What is your current -- you said the 13 titles have changed?</p> <p>14 A. The titles have changed. So now I am 15 called a senior marketing communications manager.</p> <p>16 Q. Can you run me through the titles? How many have there been?</p> <p>17 A. I honestly -- the only two that I 18 know of are sales promotion -- oh, ad specialties 19 was the first one.</p> <p>20 Q. Yes.</p> <p>21 A. Sales promotion manager.</p> <p>22 Q. Yes.</p> <p>23 A. And then recently it was changed to</p> | <p>Page 36</p> <p>1 bid out a job with various vendors and award the 2 job to one vendor, and receive proofs and give 3 them instructions for delivery.</p> <p>4 Q. And you said you also work on merchandising.</p> <p>5 A. Merchandising is the in-store 6 signage. So posters, door trans, which are the 7 materials that go into light boxes. It could be 8 window clings. It could be banners. Any large 9 end marketing signage.</p> <p>10 Q. Other than print production and merchandising, what else?</p> <p>11 A. That's where my focus is right now.</p> <p>12 Q. I'm going to focus a little bit on the gift card program, if that's okay.</p> <p>13 A. Uh-huh.</p> <p>14 Q. When did your involvement with the 15 gift card program start or when was your first 16 involvement with the gift card program at Commerce 17 or TD Bank?</p> <p>18 A. It would have been around the same 19 time that the program started for the public in 20 2004.</p> <p>21 Q. And in 2004, you were sales promotion</p> |
| <p>Page 35</p> <p>1 senior marketing communications manager.</p> <p>2 Q. And your duties as senior 3 marketing -- when did you become senior marketing 4 communications?</p> <p>5 A. I don't know the exact date that the 6 titles changed. It was an HR change, so I don't 7 know exactly what date they were, but it would 8 have to be since -- it was after the merger.</p> <p>9 Q. And the merger was in '08?</p> <p>10 A. The legal day merger was June 1 of 11 '08.</p> <p>12 Q. You said your roles have changed a 13 little bit. Run me through your duties as senior 14 marketing communications manager.</p> <p>15 A. I oversee the print production and 16 the merchandising.</p> <p>17 Q. What is print production?</p> <p>18 A. Print production is anything having 19 to do with getting materials printed and produced 20 for the company relative -- marketing materials, I 21 should preface that. So I would work -- I would 22 receive files from a project manager or marketing 23 team lead, once they have gone through their 24 responsibility and their approvals, and I would</p> | <p>Page 37</p> <p>1 manager?</p> <p>2 A. Correct.</p> <p>3 Q. Relative to the gift card program, as 4 I understand it, you would get an order for 5 merchandising or print material or some sort of 6 marketing material from the bank, and you would 7 then --</p> <p>8 A. I'm not understanding.</p> <p>9 Q. I could tell by the look on your face 10 you have no idea what I'm talking about.</p> <p>11 As I understand it, you're sort 12 of a liaison between the bank and the outside ad 13 agencies. Is that fair?</p> <p>14 A. To some degree, yes.</p> <p>15 Q. Okay.</p> <p>16 A. Go ahead. Are you going to finish 17 your question?</p> <p>18 Q. No, you can explain.</p> <p>19 A. The difference -- if there was an 20 item that was requested to be printed and 21 designed, I would get that information, I would 22 get as much information as I could, and very 23 similar to before, would then provide that 24 information to the ad agency. There are the times</p> |

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| <p>1 we might have used the in-house design group that 2 we had at that time, and they would come up with 3 layouts to review. So yes, a liaison would be a 4 good word for it.</p> <p>5 Q. Okay. So who -- in 2004, when the 6 gift card program began and you were the sales 7 promotions manager, who in the bank would have 8 contacted you regarding your roles around the 9 gift card program?</p> <p>10 A. I worked with Dan Goldman.</p> <p>11 Q. Anyone else?</p> <p>12 A. He was -- he had just started 13 developing the program, so he would have been the 14 only contact at that particular time to 15 initiate -- to get information from to initiate a 16 job.</p> <p>17 Q. Okay. Do you remember how you got 18 involved in the gift card program?</p> <p>19 A. That just fell under my line of 20 responsibility. It was one of the lines of 21 business that was under my umbrella.</p> <p>22 Q. I mean specifically, Dan Goldman 23 either called you or sent you an email?</p> <p>24 A. He was in the same department as I</p> | <p>1 Q. And who was that? 2 A. Tierney and Partners.</p> <p>3 Q. Go ahead.</p> <p>4 A. And then with that information, they 5 would come up with some kind of design and layout 6 option for Dan as well as other marketing 7 representatives to review.</p> <p>8 Q. Other than Dan, who else would review 9 these?</p> <p>10 A. Dan's supervisor was Kevin Barry.</p> <p>11 Q. Okay.</p> <p>12 A. My supervisor would have reviewed it, 13 who is Allegra Sandelli. And typically, since it 14 was a new program, our director of marketing would 15 also have reviewed it, who was John Cunningham.</p> <p>16 Q. Other than Dan Goldman, Kevin Barry, 17 Allegra Sandelli, and John Cunningham, anyone 18 else?</p> <p>19 A. Not that I recall.</p> <p>20 I should say compliance most 21 likely would have seen it, but I can't guarantee 22 that that happened in the course of that 23 particular piece.</p> <p>24 Q. What's compliance?</p> |
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| <p>1 was, we were in the same location. It would have 2 been a one-on-one meeting.</p> <p>3 Q. Do you remember -- was it a 4 one-on-one meeting?</p> <p>5 A. It may have been. I don't recall.</p> <p>6 Q. Do you remember anything about first 7 becoming aware of the gift card program and having 8 to do work on it, I guess?</p> <p>9 A. I'm not sure I understand about being 10 aware. We would have had some kind of 11 conversation, and we would have begun work on 12 developing -- the first piece, if I recall 13 correctly, was the first trifold.</p> <p>14 Q. What was your involvement with the 15 first trifold?</p> <p>16 A. I would gather the information.</p> <p>17 Q. Let me interrupt you. You would 18 gather the information from Goldman?</p> <p>19 A. Dan would provide content that he 20 would like to see within the piece as well as the 21 terms and conditions, and I would provide that to 22 in this case it was our agency.</p> <p>23 Q. Your in-house agency?</p> <p>24 A. No, our external agency.</p> | <p>1 A. Compliance is our -- compliance is 2 our legal review?</p> <p>3 Q. What do you understand -- I'm sorry, 4 I didn't mean to interrupt.</p> <p>5 A. I guess that's the closest comparison 6 I can think of.</p> <p>7 Q. What do you understand compliance's 8 role to be?</p> <p>9 A. To review materials to make sure that 10 whatever we state is correct and acceptable and 11 permitted to be used.</p> <p>12 Q. I understand "correct," but I don't 13 understand acceptable or permitted. Do you mean 14 acceptable or permitted under the law or under 15 some sort of --</p> <p>16 A. Whatever guidelines that they would 17 follow, yes.</p> <p>18 Q. Outside guidelines, not internal?</p> <p>19 A. Correct. Correct.</p> <p>20 Q. Did you conduct any review to ensure 21 that the materials were compliant with either 22 outside guidelines or -- at any time?</p> <p>23 A. On some instances I did. For 24 instance, with our posters, when we did posters</p> |

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| <p>1 and window cling signage, I would do that.</p> <p>2 Q. Posters and window cling signage</p> <p>3 relative to the gift card program?</p> <p>4 A. Correct.</p> <p>5 Q. When was this?</p> <p>6 A. It could -- it was done over the</p> <p>7 course of time when we had new creative that was</p> <p>8 developed for a campaign.</p> <p>9 Q. Did you review the posters and the</p> <p>10 window clings for compliance throughout the entire</p> <p>11 gift card program or was it only specific ones</p> <p>12 or...</p> <p>13 A. As it was -- as we were promoting the</p> <p>14 campaign. It wasn't a continuous promotion</p> <p>15 throughout the year. We primarily did it in the</p> <p>16 spring and the holiday season.</p> <p>17 Q. But my question is for any new signs</p> <p>18 or window clings, would you take the role of</p> <p>19 making sure that they were compliant with the law</p> <p>20 or guidelines?</p> <p>21 A. Typically, yes.</p> <p>22 Q. What law or guidelines would you</p> <p>23 ensure that the signage was compliant with?</p> <p>24 A. I would only forward it on to</p> | <p>1 going to produce?</p> <p>2 A. For the terms and conditions he</p> <p>3 typically sent, obviously, an electronic document.</p> <p>4 Q. An email?</p> <p>5 A. Uh-huh.</p> <p>6 Q. What about for things other than the</p> <p>7 terms and conditions?</p> <p>8 A. It would have been a discussion.</p> <p>9 Q. Do you keep records of your</p> <p>10 discussions?</p> <p>11 A. No.</p> <p>12 Q. But you keep your emails?</p> <p>13 A. From back then, back in 2004? I</p> <p>14 probably don't have those emails anymore. I would</p> <p>15 have had -- I would have made printouts. I would</p> <p>16 have probably printed some of them out so I could</p> <p>17 have them in the file, which I did actually do.</p> <p>18 Q. And you produced all of those to your</p> <p>19 counsel?</p> <p>20 A. Yeah.</p> <p>21 MR. HARVEY: Object to the form</p> <p>22 of the question. All of what?</p> <p>23 MR. LALLI: All of these</p> <p>24 printouts that we're speaking about.</p> |

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1 compliance for their review and accept their

2 approval as being correct.

3 Q. Okay. So you wouldn't personally --

4 A. I would never have done it

5 personally.

6 Q. I understand. You didn't do it

7 personally --

8 A. No.

9 Q. -- you would be the one who sent it

10 to compliance.

11 A. Exactly.

12 Q. And get their answer back.

13 A. Exactly.

14 Q. Okay. I'm glad I misunderstood you,

15 because that was going to make the deposition

16 a lot longer.

17 A. I'm not a lawyer.

18 Q. Okay. Other than Dan Goldman, Kevin

19 Barry, Allegra Sandelli, John Cunningham, and

20 compliance, anyone else who would review?

21 A. No, not that I recall.

22 Q. How would you -- in what format would

23 you get the information that the bank, I guess

24 being Dan Goldman, wanted in whatever you were

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1 THE WITNESS: Whatever I had

2 printed out that was in the file, I would

3 have provided.

4 BY MR. LALLI:

5 Q. Okay. To counsel?

6 A. Yes.

7 Q. I did see one email from you saying,

8 what was it, "Thank god I keep everything," or

9 something to that effect.

10 A. I keep as much as I can. It may not

11 be everything, but...

12 Q. Okay. So the terms and conditions

13 would have come in an email. And he would just

14 send you an email saying, "This is the terms and

15 conditions I want," and it would be attached to

16 the email that you would then forward that to the

17 ad agency? Is that fair?

18 A. That's fair enough, yeah. I can't

19 remember the exact sequence, but that would have

20 been -- because the terms were rather lengthy.

21 Q. Would you review the terms before

22 they were sent to the ad agency?

23 A. No.

24 Q. Would you review the terms when they

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| <p>1 were sent back to you from the ad agency?</p> <p>2 A. For proofing purposes, yes.</p> <p>3 Q. Proofing meaning editing?</p> <p>4 A. Any kind of typos, grammatical,</p> <p>5 punctuation.</p> <p>6 Q. But nothing content-wise?</p> <p>7 A. No.</p> <p>8 MR. LALLI: Let me mark this as</p> <p>9 Moncilovich-1.</p> <p>10 (Discussion held off the</p> <p>11 record.)</p> <p>12 (Document received and marked</p> <p>13 for identification Plaintiffs' Exhibit</p> <p>14 Moncilovich-1, Documents Bates-stamped</p> <p>15 number TD001194 through TD001197,</p> <p>16 consisting of 4 pages.)</p> <p>17 BY MR. LALLI:</p> <p>18 Q. Miss Moncilovich -- or</p> <p>19 Mrs. Moncilovich, I apologize.</p> <p>20 A. Ms.. That's fine.</p> <p>21 Q. What I've put in front of you is a</p> <p>22 document that's been produced to us by the bank's</p> <p>23 counsel. It's Bates numbers TD001194 through</p> <p>24 TD001197. Now, I understand this may not be the</p> | <p>1 wouldn't have sent it back if Dan hadn't seen it</p> <p>2 and reviewed it again, since you wouldn't want to</p> <p>3 make a change -- and then he makes a change, and</p> <p>4 send it back; we'd want to be as concise at one</p> <p>5 time as we could.</p> <p>6 Q. Other than Dan, who would review your</p> <p>7 edits to terms and conditions?</p> <p>8 A. I don't recall anyone else, since Dan</p> <p>9 was definitely the one personally overseeing the</p> <p>10 terms and conditions.</p> <p>11 Q. So Dan was the go-to guy when it came</p> <p>12 to terms and conditions?</p> <p>13 A. For most -- for the beginning of the</p> <p>14 program especially, yes. And then later on,</p> <p>15 legal, as we -- when Dan had left the company,</p> <p>16 then I had actually worked with legal.</p> <p>17 Q. Is legal Richard Berman?</p> <p>18 A. Yes, for his review.</p> <p>19 MR. LALLI: All right, let's</p> <p>20 take a quick lunch break.</p> <p>21 (At this time, a lunch recess</p> <p>22 was taken.)</p> <p>23 BY MR. LALLI:</p> <p>24 Q. Ms. Moncilovich, can you please -- I</p> |
| <p style="text-align: center;">Page 47</p> <p>1 terms and conditions that we were speaking of.</p> <p>2 A. Okay.</p> <p>3 Q. Do you know who made these edits?</p> <p>4 A. I don't. It doesn't look like my</p> <p>5 handwriting, so I honestly don't know.</p> <p>6 Q. When you said you would proof terms</p> <p>7 and conditions for grammatical errors, is this the</p> <p>8 sort of thing you would do?</p> <p>9 A. Correct.</p> <p>10 Q. And then you would forward this to --</p> <p>11 when I say "this," the copy with your edits on it,</p> <p>12 would you forward this to someone at the bank or</p> <p>13 would you send it right back to the ad agency for</p> <p>14 them to make corrections?</p> <p>15 A. It would depend. If this came -- I'm</p> <p>16 not sure where this came from, but...</p> <p>17 Q. And I'm not speaking specifically</p> <p>18 about this document; I'm speaking generally. You</p> <p>19 said the terms and conditions you would proof for</p> <p>20 edits.</p> <p>21 A. Right. But I wouldn't send it back</p> <p>22 for re-correcting until other people had seen it.</p> <p>23 Q. Other people within the bank?</p> <p>24 A. Correct. So, in other words, I</p> | <p style="text-align: center;">Page 49</p> <p>1 understand that you want to add to a response that</p> <p>2 you made earlier and clear something up.</p> <p>3 A. For people that I had talked to or at</p> <p>4 least corresponded with relative to materials that</p> <p>5 I was coordinating for this particular case, I had</p> <p>6 also provided materials to Pattie Gallant from</p> <p>7 TD Banknorth, who was assembling that information</p> <p>8 initially.</p> <p>9 Q. You provided materials to Pattie or</p> <p>10 she provided them to you?</p> <p>11 A. I provided them to Pattie.</p> <p>12 Q. And what did you provide to Pattie?</p> <p>13 A. They would have been PDFs, copies of</p> <p>14 various kinds of collateral from -- it could be</p> <p>15 posters, newspaper advertising, some of the</p> <p>16 gift card designs that we had over the years.</p> <p>17 Q. And you did this in response to a</p> <p>18 request from Pattie?</p> <p>19 A. Correct.</p> <p>20 Q. What did her -- what was the form of</p> <p>21 her request? Was it an email, a telephone call?</p> <p>22 A. I don't recall offhand. It could</p> <p>23 have been both.</p> <p>24 Q. Okay. And it was just, "Hey, give me</p> |

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| <p>1 what you have," or was there anything substantive? 2 A. If I could collect materials. 3 Q. When did this request and then the 4 production to Pattie occur? 5 A. It was sometime around January of 6 '09. 7 Q. I appreciate that. 8 A. It just makes you think. Sometimes 9 you have so many thoughts going on in your head, 10 you don't remember everything right away. 11 Q. I completely understand. 12 When we left prior to lunch, we 13 were speaking about the terms and conditions and 14 who you would get information from and that sort 15 of thing. Now, you said in the beginning, Dan 16 Goldman was the source of the terms and 17 conditions. 18 A. Correct. 19 Q. Was he also the source of the 20 disclosures that were located on the back of the 21 card? 22 A. Yes. 23 Q. Was he also the source of the writing 24 on the actual trifold, itself?</p> | <p>1 A. For different projects? 2 Q. For -- how about the gift card 3 program? 4 A. The gift card program, as I recall, 5 was mostly with the agency. We never did anything 6 in-house especially in the initial beginning that 7 I recall. 8 Q. Do you remember if the internal 9 design group did any work at all with the 10 gift card program at any time? 11 A. They did. They had -- there was a 12 designer that would provide design options for our 13 holiday card creative. Design. 14 Q. Who was that? 15 A. It could -- it may have been a few of 16 them. I know that a woman named Heather Cairns, 17 C-A-I-R-N-S, did some creative design, and I'm not 18 sure if anybody else did. 19 Q. All right. Now, would the decision 20 be made or who makes the decision as to whether or 21 not to use an outside agency or the in-house 22 design group? 23 A. It would have been the scope of what 24 the project would have entailed. So if it was a</p> |
| <p>1 A. The promotional content? The 2 promotional -- if you're referring to promotional 3 content, he would have given us some indication of 4 what he would like to have seen, but he wouldn't 5 have been the actual copywriter unless there was 6 something specific that he wanted to incorporate 7 within that. 8 Q. Who would have been the copywriter? 9 A. It would have been someone from the 10 agency. 11 Q. Someone from the outside ad agency? 12 A. Yes. 13 Q. You mentioned you had an internal ad 14 agency, as well, or internal -- 15 A. It was just an internal design group. 16 We have in-house designers. 17 Q. Okay. What is the name of their 18 department? 19 A. In-house design. I don't know if 20 there was a formal name. The design group. 21 Q. Would you liaise between Goldman and 22 whoever and the internal design group in the same 23 ways in which you would liaise between Goldman and 24 whoever and the outside groups?</p> | <p>1 project that had a lot of legs to it where we 2 needed copywriting, we wanted a much more detailed 3 look, something that needed to be built, then we 4 would have the agency do it, since they had the 5 resources for hiring the copywriter, assembling a 6 lot of it in-house, versus our design group, which 7 is really much more production work, quick and 8 dirty. Though we have designers that can come up 9 with different creative looks for pieces, they 10 weren't an all inclusive in the sense they don't 11 place advertising; it's strictly production. 12 Q. Who would that make that decision? 13 When I say "that decision," I mean the decision to 14 use in-house versus -- 15 A. Generally my manager, Allegra 16 Sandelli. 17 Q. Okay. When the design group would 18 produce things, would it go through the same 19 approval process as items produced by the outside 20 agencies? 21 A. There would still be a contact 22 person, so I -- if I were doing something with the 23 design group, yes, I would still -- they would 24 still provide it to me, and it would still be</p> |

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| <p>1 provided to Dan to review, and then Allegra and 2 John, as well. Unless -- that's not to say that 3 Dan may not have gone to a designer direct to ask 4 if they could come up with some card designs. So, 5 for instance, the holiday card, he may have gone 6 to Heather Cairns and said, "We need to start 7 coming up with some options, some looks." 8 Q. He may have skipped you? 9 A. He may have skipped me. 10 Q. Okay. 11 A. Absolutely. 12 Q. Now, you said Dan Goldman was the 13 sort of go-to guy in the beginning at least. 14 A. For the program -- 15 Q. For the program. 16 A. -- he was always the go-to guy. 17 Q. Always, from -- 18 A. As far as my experience was 19 concerned, yes. 20 Q. When did Dan leave the company? 21 A. I don't know the exact date that he 22 left. 23 Q. Do you know who took over that role 24 after he left?</p> | <p>1 person; you just had them because they were used 2 previously? 3 A. They were the current ones that were 4 still in play. 5 Q. What about changes made to the terms 6 and conditions, who would make those changes? 7 A. It would have to have been legal if 8 there was any kind of recommended changes to be 9 made. 10 Q. Did you have any input, any input at 11 all into the terms and conditions of the card? 12 A. No. 13 Q. Any input at all -- let me rephrase 14 that. Other than you proofreading them, did you 15 have any input in the terms and conditions of the 16 cards? 17 A. No. 18 Q. Did you have any input in the 19 disclosures located on the back of the card? 20 A. No. 21 Q. Did you have any input -- and these 22 questions are encompassing at any time. Do I need 23 to reask those questions? 24 A. I'm not sure what mean by</p> |
| <p style="text-align: center;">Page 55</p> <p>1 A. I don't believe there was anybody who 2 took over that role. 3 Q. After he left, who was your point 4 person for the gift card program? When I say -- 5 Let me clear that up. When I say "your point 6 person," I mean the person who did the same things 7 that Dan did in terms of coming to you for -- 8 A. Well, the gift card program at that 9 point was more maintenance than it was new 10 development. 11 Q. Okay. 12 A. So when Dan had left, and I don't 13 remember the exact date, I would still have been 14 involved in reprinting -- if we needed new 15 reprints, so if there were terms and conditions, I 16 probably would have been most -- I really was the 17 point person to some degree to funnel through to 18 legal for terms and conditions review and funnel 19 through my supervisor for any creative review. 20 Q. Where would those terms and 21 conditions come from? 22 A. They were a pick-up of the existing 23 ones that were already in place. 24 Q. Okay. So they wouldn't come from any</p> | <p style="text-align: center;">Page 57</p> <p>1 encompassing. 2 Q. When I say did you have any input, I 3 mean at any point in time did you have any input 4 in the terms and conditions of the gift cards. 5 A. In the language that is on the back 6 of the terms and conditions? 7 Q. In the language of the terms and 8 conditions. 9 A. No. 10 Q. At any point in time, did you have 11 any input in the disclosures located on the back 12 of the card? 13 A. No. 14 Q. At any point in time, did you have 15 any input in any of the language located on any 16 advertisements, either posters, store fliers, any 17 advertisements for gift cards? 18 A. Not as far as determining what the 19 final language would be, no. 20 Q. Tell me what your input would be, 21 because it seems like you qualified that a little 22 bit. 23 A. Well, in later programs, for instance 24 when Dan was gone, there are certain key elements</p> |

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| <p>Page 58</p> <p>1 and concepts that we always wanted to reiterate on 2 a poster, so it became standard, we knew what the 3 main elements would be. I mean it was always free 4 to purchase, it was always accepted everywhere 5 Visa debit is accepted, it was available in 25 to 6 \$500 denominations, it was eloquently gift boxed. 7 So they were the primary key concepts that we 8 would always pick up if we were doing, say, a 9 holiday poster, and it really didn't deviate from 10 that through the years that I can recall.</p> <p>Q. Who came up with those key -- points, 12 did you call them?</p> <p>A. Concept points, key concept points?</p> <p>Q. Yes. Who came up with those?</p> <p>A. It would be hard to say. It could 16 have been a collective effort of various people 17 whether it be Dan, Kevin, Allegra, John, the 18 agency. It was most likely a collective 19 consensus. I couldn't tell you for sure.</p> <p>Q. Did you have any input into coming up 21 with any of those key concept --</p> <p>A. Points?</p> <p>Q. -- points?</p> <p>A. No.</p> | <p>A. Basically the production of the final 2 materials and fulfillment of them.</p> <p>Q. When you say, "Production of the 4 final materials and fulfillment of them," can you 5 just tell me what that means?</p> <p>A. I would get the files. I would work 7 with the vendor to produce them, the correct 8 weight, the correct size, package them correctly, 9 get them to the branches, communicate where to 10 post them in the branches, and designate where in 11 the branch they are to go.</p> <p>Q. But you wouldn't have any input in 13 the content --</p> <p>A. No.</p> <p>Q. -- of any of this stuff?</p> <p>A. Not today, no.</p> <p>Q. You said Leigh Fulda is the person 18 who now sort of does that?</p> <p>A. She project manages the debit card, 20 which this falls under.</p> <p>Q. "This" being the gift card program?</p> <p>A. Yes.</p> <p>Q. When did the switch occur between you 24 and Leigh?</p> |
| <p>Page 59</p> <p>Q. No. Okay. Did you have any input at 2 any time into what the gift card packaging was 3 going to look like?</p> <p>A. No.</p> <p>Q. Did you have any input at any time 6 into how the gift card transaction was going to 7 work in the banks, themselves?</p> <p>A. No.</p> <p>Q. And I assume you also had no input -- 10 did you have any input in the training materials 11 regarding the gift card program that the bank 12 would put out?</p> <p>A. No.</p> <p>Q. So Dan's gone. Today, who do you 15 report to with issues specific to the gift card 16 program?</p> <p>A. I'm not as involved with the 18 gift card program anymore since that now is 19 handled through our -- through Leigh Fulda, who 20 had project managed the -- any materials that we 21 needed for that program. So my involvement is 22 much -- has really stepped back from the 23 gift card, itself.</p> <p>Q. What is your involvement today?</p> | <p>Page 61</p> <p>A. I don't know if there was an official 2 date, but conceivably when we all converted to 3 TD Bank, which was September of '09.</p> <p>Q. '09?</p> <p>A. Are we in '10? Yes, '09.</p> <p>Q. So a year after the merger?</p> <p>A. Yes.</p> <p>Q. Does Leigh report to you?</p> <p>A. No.</p> <p>Q. Who reports to you specifically 11 related to the gift card program?</p> <p>A. No one reports to me specifically for 13 the gift card program. I have two print buyers 14 that report to me and a merchandising manager that 15 reports to me.</p> <p>Q. Who are they?</p> <p>A. One is Patricia Hymer, H-Y-M-E-R.</p> <p>Q. And what is her position?</p> <p>A. She is a print production specialist. 20 I believe that's the correct title.</p> <p>Q. And you said there were two print 22 people. Who was the other print person?</p> <p>A. Nicole Fioravanti, 24 F-I-O-R-A-V-A-N-T-I, and she has the same position</p> |

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| <p>Page 62</p> <p>1 title. 2 Q. And who's the other person? 3 A. Derrick Green. He's a merchandising 4 manager. 5 Q. And these three people report to you 6 for -- 7 A. Production and merchandising. 8 Q. And some of that includes the 9 gift card program? 10 A. If we were printing relative -- 11 something relative to the program, yes. 12 Q. I want to focus on the disclosures on 13 the backs of the cards. 14 A. Okay. 15 Q. We've been produced or the defendants 16 have produced a number of documents in this 17 matter, and they evidence that certain changes 18 took place in the disclosures on the back of the 19 cards. Is that a fair -- 20 A. Over the years? 21 Q. Over the years, yeah. Is that a fair 22 representation? 23 A. Yes. 24 Q. Okay. Do you know who drafted the</p> | <p>Page 64</p> <p>1 some of the current terms, there were slight 2 changes and modifications that were made. 3 Q. And Rich Berman's with legal? 4 A. Correct. 5 Q. So as far as you know, the only 6 changes made to the disclosures came from Dan 7 Goldman and legal? 8 MR. HARVEY: Objection. She 9 said they were made during the time that 10 Rich Berman was reviewing it. She didn't 11 necessarily say they came from legal. 12 MR. LALLI: Okay. 13 BY MR. LALLI: 14 Q. Did those changes come from legal? 15 MR. HARVEY: I'm going to 16 object to the form of the question. That's 17 really getting into attorney-client 18 privilege. 19 MR. LALLI: I'm trying to stay 20 away from that. 21 MR. HARVEY: I'm going to 22 instruct you not to answer that. 23 BY MR. LALLI: 24 Q. Any changes to the terms and</p> |
| <p>Page 63</p> <p>1 initial disclosures, the disclosures that were 2 used first way back in -- with Commerce Bank? 3 A. I do not. 4 Q. Do you know which department those 5 disclosures would have come from? 6 A. I do not. 7 Q. Going forward, who would have made 8 changes to those disclosures? 9 A. I would have received changes from 10 Dan. Who he consulted, I couldn't verify. 11 Q. Who do you think he would have 12 consulted? 13 A. Legal. 14 Q. Anyone else or any other department? 15 A. I would only be speculating. I have 16 no clue. 17 Q. Okay. Other than Dan Goldman and 18 maybe legal, who else would have been responsible 19 for changes? 20 A. I don't know. 21 Q. Since Dan left, have there been any 22 changes to the disclosures on the backs of the 23 cards? 24 A. When Rich Berman had been reviewing</p> | <p>Page 65</p> <p>1 conditions come from anyone other than Dan Goldman 2 and from the legal department that you know? 3 A. Not that I know of, no. 4 Q. What about changes to the terms and 5 conditions? 6 A. It would be the same. 7 Q. Dan Goldman and legal? 8 A. Uh-huh. 9 Yes. 10 Q. Do you know who formulated the 11 initial terms and conditions? 12 A. I do not. 13 Q. What's the purpose of the gift card 14 advertisements? 15 MR. HARVEY: Object to the form 16 of the question. 17 BY MR. LALLI: 18 Q. Why do you advertise for gift cards? 19 A. So that customers know that we have a 20 product to provide to them. 21 Q. Is one of the purposes to increase 22 the sale of gift cards? 23 A. Well, any kind of marketing would 24 obviously be to promote a product that we have,</p> |

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| Page 66 <p>1 and if the end result is the -- more sale of it, 2 then yes, I would say that would be an accurate 3 statement. 4 Q. That would be a goal of the 5 advertising? 6 A. Absolutely. 7 Q. Is it important to avoid 8 advertisements that are misleading? 9 MR. HARVEY: Object to the form 10 of the question. 11 BY MR. LALLI: 12 Q. You can answer the question, if you 13 understand it. 14 A. Can you be a little clearer? Is it 15 important? Is it important to whom? 16 Q. Is it -- we'll start with the bank 17 first. Is it important for the bank to avoid 18 putting out advertisements that may be misleading 19 to consumers? 20 A. My personal opinion, it would say 21 yes, it's important, but I think that's more of an 22 opinion, then I obviously can't speak for the 23 bank. 24 Q. Sure. I understand that. Why do you</p> | Page 68 <p>1 question? It seemed like -- it was important to 2 whom? I don't think you clarified who it was 3 important to. 4 Q. Yeah, that was my question. Now, do 5 you think it's important for consumers to be able 6 to understand an advertisement? 7 MR. HARVEY: I'm going to 8 object. You're just asking her her 9 personal opinions here? 10 MR. LALLI: Sure. 11 MR. HARVEY: I object on the 12 grounds it's not relevant. 13 Go ahead, you can answer. 14 THE WITNESS: I mean, again, it 15 is, it's all personal opinion. 16 MR. LALLI: Okay. 17 THE WITNESS: Do I think it's 18 important that a consumer understand an ad? 19 It is important to them to understand the 20 ad. 21 BY MR. LALLI: 22 Q. Your current position is? 23 A. Senior marketing communications 24 manager.</p> |
| Page 67 <p>1 think it's important for the bank to avoid 2 misleading advertisements? 3 MR. HARVEY: Object to the form 4 of the question. 5 BY MR. LALLI: 6 Q. You can answer the question. 7 A. Can you repeat it? 8 Q. Sure. You just said that in your 9 personal opinion it's important for the bank to 10 avoid advertisements that may mislead consumers. 11 A. Uh-huh. 12 Q. Why do you think that? 13 A. Again, it's going to be something 14 that is speculative relative to my opinion, but 15 any business, whether it be the bank or not, 16 should obviously be as truthful in their 17 advertising as they can be. 18 Q. And why is that? 19 A. I feel it makes a fair business 20 practice. 21 Q. I guess you misunderstood my first 22 question where you said for whom, the bank or 23 consumers. 24 A. No, I -- what was your first</p> | Page 69 <p>1 Q. Does the clarity -- and when I say 2 clarity, I mean -- I don't know what I mean. The 3 understandability of an ad, does that come into 4 play at all for you? 5 A. In my position? 6 Q. Yes. 7 A. No. 8 Q. Whose position or who would make 9 those determinations as to whether or not an 10 advertisement is understandable or clear to the 11 consumers? And I'll start with when the gift card 12 program began, and then going forward, if that 13 person changed, let me know. 14 A. I don't think -- again, my view is 15 that it wouldn't necessarily be any one person; it 16 would have to be a group, a collective group, 17 including other marketing representatives from the 18 director of marketing, you know, to my manager, to 19 the product group which in this case would have 20 been Dan and Kevin, to make sure that they're 21 communicating the information correctly. 22 MR. LALLI: I think it's easier 23 if I just go to one of the ads that I have 24 a question about. This will be</p> |

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| <p>1 Moncilovich-2. 2 (Document received and marked 3 for identification Plaintiffs' Exhibit 4 Moncilovich-2, Document Bates-stamped 5 number TD000249, consisting of 1 page.) 6 (Discussion held off the 7 record.)</p> <p>8 BY MR. LALLI:</p> <p>9 Q. What has just been marked as 10 Moncilovich-2 is a document produced to us by your 11 counsel. It's Bates-stamp TD000249. Have you 12 ever seen this document -- or not this particular 13 document but what this document represents?</p> <p>14 A. Yes.</p> <p>15 Q. Tell me what it is.</p> <p>16 A. This is a poster that was used for a 17 spring campaign.</p> <p>18 Q. And I'm not going to ask you when, 19 but you provided a declaration --</p> <p>20 A. I did. I mean I would have to take a 21 look.</p> <p>22 Q. Sure.</p> <p>23 A. I believe it was around 2005. 24 Yep, 2005.</p> | <p>1 A. Uh-huh. 2 Q. And then below that it says, The 3 Commerce Bank Visa Gift Card. Right? 4 A. Yes. 5 Q. And then there are three bullet 6 points to the left, and the first is, FREE, in all 7 capitals, and it's bold and there's an exclamation 8 point after it; is that correct? 9 A. Yes. 10 Q. Can you tell me who decided to use 11 the word free in this advertisement? 12 A. I don't know who made the final 13 decision. The reference was always free to 14 purchase, and obviously, again, it goes back to 15 the key concepts, there are certain elements we 16 always wanted to communicate, and depending on the 17 medium that we would use, some words would live 18 greater than other words would live. 19 This obviously was an element 20 that they wanted to communicate on this particular 21 piece, because a poster is a very -- it's a 22 walk-by kind of signage, so they want to get an 23 immediate attention grabber. 24 Q. So when you say it's a walk-by kind</p> |
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| <p>1 A. I would have seen it, absolutely.</p> <p>2 Q. But you don't have any approval</p> <p>3 authority or anything like that.</p> <p>4 A. No.</p> <p>5 Q. And you didn't come up with the idea</p> <p>6 to use free in all bold?</p> <p>7 A. No.</p> <p>8 Q. Were there any discussions that you</p> <p>9 can recall -- when I say discussions, I'm going to</p> <p>10 use that as broadly as I can.</p> <p>11 A. Okay.</p> <p>12 Q. That means in-person discussions,</p> <p>13 telephone discussions, email exchanges, regarding</p> <p>14 the use of the word free and whether or not</p> <p>15 that's -- well, let me just -- regarding the use</p> <p>16 of the free, do you remember any discussions about</p> <p>17 that?</p> <p>18 A. Specifically for the use of that</p> <p>19 word?</p> <p>20 Q. Or generally for the use of that</p> <p>21 word.</p> <p>22 MR. HARVEY: In as far as it</p> <p>23 relates to gift cards?</p> <p>24 MR. LALLI: Yes.</p> | <p>1 present for the discussion?</p> <p>2 A. At some discussion. And, again, I'm</p> <p>3 using it in a more of a broad term --</p> <p>4 Q. That's fine.</p> <p>5 A. -- because I can't isolate it to a</p> <p>6 particular incident or a particular day.</p> <p>7 Q. I completely understand that.</p> <p>8 A. Okay.</p> <p>9 Q. What do you remember about these</p> <p>10 types of broad discussions about the use of the</p> <p>11 word free in gift card advertising?</p> <p>12 A. Nothing that really stood out as</p> <p>13 memorable. It was the concept. Again, it goes</p> <p>14 back to the initial concept, key points that we</p> <p>15 wanted to promote, which was free to purchase, 25</p> <p>16 to \$500, wherever Visa debit is accepted.</p> <p>17 Q. Okay. Now, you said a key point was</p> <p>18 free to purchase. This doesn't say free to</p> <p>19 purchase.</p> <p>20 A. It emphasizes -- depending on --</p> <p>21 again, depending on the medium, it emphasize' --</p> <p>22 we emphasize certain key words. This particular</p> <p>23 piece is what I call a walk-by kind of piece where</p> <p>24 we want an immediate attention grabber.</p> |
| Page 75 | Page 77 |
| <p>1 THE WITNESS: Not focusing in</p> <p>2 just on that, that being an element to</p> <p>3 incorporate, I vaguely remember a</p> <p>4 discussion, but it's not something that I</p> <p>5 can say definitely happened for this</p> <p>6 particular piece or any other particular</p> <p>7 piece.</p> <p>8 BY MR. LALLI:</p> <p>9 Q. What would that -- tell me what you</p> <p>10 remember from that discussion or -- first, who was</p> <p>11 part -- who took part in this discussion?</p> <p>12 A. It would have been a collective</p> <p>13 group. Again, it was -- it would have been John.</p> <p>14 Q. John Cunningham?</p> <p>15 A. Uh-huh. Allegra. Dan. But whoever</p> <p>16 came up with the final decision of what -- how it</p> <p>17 came, I couldn't tell you.</p> <p>18 Q. Do you know -- I assume you were also</p> <p>19 part of this discussion.</p> <p>20 A. Part of it as far as providing input?</p> <p>21 Q. Sure.</p> <p>22 A. No. I wouldn't have provided any</p> <p>23 input. I may have been sitting in the room.</p> <p>24 Q. That was my next question. You were</p> | <p>1 Q. Okay.</p> <p>2 A. So the "free" is in the bullet, and</p> <p>3 then, no purchase fee, is in the disclaimer line.</p> <p>4 Q. Okay. And the disclaimer line is way</p> <p>5 at the bottom.</p> <p>6 A. Uh-huh.</p> <p>7 Q. It's in the smallest print on the</p> <p>8 poster. You would agree with me there, right?</p> <p>9 A. Right. Even if you see it -- this is</p> <p>10 obviously much more scaled down than you'll see in</p> <p>11 actuality.</p> <p>12 Q. Sure. But, regardless, even blown</p> <p>13 up, it's still going to be the smallest print --</p> <p>14 A. Type size, it will be the smaller of</p> <p>15 the type sizes.</p> <p>16 Q. The smallest of the type sizes.</p> <p>17 A. Uh-huh.</p> <p>18 Q. Correct?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And you said this is a quick</p> <p>21 hitter type sign, right?</p> <p>22 A. Uh-huh.</p> <p>23 Yes.</p> <p>24 (Document received and marked)</p> |

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| <p>Page 78</p> <p>1 for identification Plaintiffs' Exhibit 2 Moncilioch-3, Document Bates-stamped 3 number TD000713, consisting of 1 page.) 4 BY MR. LALLI: 5 Q. What's just been marked as 6 Moncilioch-3 is a document that was produced by 7 the bank's counsel. It's Bates-stamped TD000713. 8 Do you recognize this document? 9 A. Yes. 10 Q. Tell me what this document is. 11 A. This is, if I'm not mistaken, this is 12 the poster for the latest holiday season, for the 13 2009 holiday season. 14 Q. Feel free to -- 15 A. Can I refer to the declaration? 16 Q. Sure, you can. Feel free to refer to 17 the declaration. 18 A. Thank you. 19 There it is, yeah, poster for 20 2009. 21 Q. And is this the same type of poster 22 that would be seen in a bank branch that was 23 marked as Exhibit-2? 24 A. Yes.</p> | <p>Page 80</p> <p>1 that were chosen for this were chosen. 2 Q. Who would know why? 3 MR. HARVEY: Object to the form 4 of the question. 5 THE WITNESS: Yeah, I can 6 only -- I can only deduce that Leigh Fulda 7 who was the project manager for this 8 particular piece would have better answers. 9 Or clearer answers. 10 BY MR. LALLI: 11 Q. At what office is Leigh Fulda? 12 A. In Maine, West Falmouth. 13 Q. Is it fair to say that you had no 14 input at all -- or I don't even want to say input, 15 because we know that; you had no connection with 16 this, you didn't -- did you ever see this before 17 it went out? 18 A. I would have seen it before it was 19 sent to the vendor for production, and that's 20 about it. 21 Q. Okay. But you don't know why the 22 switch was made from free to no purchase fee? 23 A. No. 24 Q. Do you remember any discussions about</p> |
| <p>Page 79</p> <p>1 Q. Same size, basically? 2 A. Size may have varied depending on the 3 fixture that it was going in, and size may also 4 vary in the New England footprint, since they have 5 different fixtures than the Commerce legacy 6 footprint. 7 Q. Is this a walk-by sign? 8 A. Same kind of treatment, yes. 9 Q. Quick hit? 10 A. (Indicating.) 11 Yes. 12 Q. Okay, you nodded your head. 13 A. Yes. 14 Q. Now, if you look at this sign, it 15 doesn't say free; is that right? 16 A. Correct. 17 Q. And instead, in the bottom right 18 there's sort of a ribbon and it says, no purchase 19 fee; is that correct? 20 A. Yes. 21 Q. Tell me why. 22 A. I can't answer that. I wasn't 23 involved in the design of this particular piece, 24 so I have no input as to why some of the elements</p> | <p>Page 81</p> <p>1 making the switch from free to no purchase fee? 2 A. No. 3 Q. In your mind -- you said free means 4 no purchase fee, right? When we go back -- 5 A. It was always the connection. 6 Q. If we go back to Exhibit-2, the free 7 means no purchase fee? 8 A. Yes. 9 Q. In your mind, between Exhibit-2 and 10 Exhibit-3, which is the more clear to the customer 11 about that aspect of the gift card? 12 A. Well, that's being speculative, I 13 think. 14 MR. HARVEY: Objection to the 15 form of the question. 16 BY MR. LALLI: 17 Q. Assume you're a customer for me. 18 A. If I'm a customer, I'm going to see 19 the one that obviously has less words, and key 20 points that are pronounced on the piece to get my 21 attention. 22 Q. Okay. So in your estimation -- and 23 you say that with your marketing experience? 24 A. I'm saying that --</p> |

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| <p>Page 82</p> <p>1 MR. HARVEY: Object to the form 2 of the -- I'm sorry, is that a question? 3 MR. LALLI: Yes. 4 MR. HARVEY: Object to the form 5 of the question. 6 BY MR. LALLI: 7 Q. You can answer the question. 8 A. Can you repeat the question? 9 Q. Sure. You said as a customer you're 10 going to see the one with the -- I forget the 11 exact wording, but it sounded like that was coming 12 from some sort of education or experience in 13 marketing. Is that fair? 14 MR. HARVEY: Object to the form 15 of the question. You asked her her 16 experience as a customer what she would 17 expect. 18 MR. LALLI: I understand that. 19 And from her answer I gathered that it came 20 from not just as a customer but from your 21 position or experience or education or 22 something regarding marketing. It just 23 sounded -- 24 THE WITNESS: Meaning I'm</p> | <p>Page 84</p> <p>1 BY MR. LALLI: 2 Q. Why do you think that the ones with 3 the less words, and key points will get the 4 customer's attention? 5 A. Well, you're asking me to speculate 6 in many ways. I can give you my personal opinion, 7 again, to say if I'm driving on a street, if I'm 8 driving down a road and I see a billboard, I'm 9 going to see the one word that is the largest on 10 that board and probably will not notice anything 11 else. So the same concept goes for this piece, 12 I'm going to see what attracts my attention first. 13 That's how -- that's what I would pay attention 14 to. That doesn't necessarily mean someone else is 15 going to do that, obviously. 16 Q. I understand that. And in design and 17 in marketing, are the people coming up with these 18 advertisements aware of that concept that you just 19 expressed? 20 MR. LALLI: Object to the form 21 of the question. You're asking her to 22 testify about the awareness of undefined 23 people who came up with these 24 advertisements?</p> |
| <p>Page 83</p> <p>1 giving -- I'm talking marketing terms? 2 MR. LALLI: It just struck me 3 as a very -- you know. 4 THE WITNESS: Well, you're -- 5 MR. HARVEY: Object to the form 6 of the question. There's no question 7 pending right now. Do you have a question? 8 MR. LALLI: Can you read back 9 her previous answer to me, please. 10 (The court reporter read back a 11 preceding portion of the testimony as 12 directed: 13 "Q. Assume you're a customer 14 for me. 15 "A. If I'm a customer, I'm 16 going to see the one that obviously has 17 less words, and key points that are 18 pronounced on the piece to get my 19 attention.") 20 BY MR. LALLI: 21 Q. Now, that response, why do you think 22 that? That is the broadest way I can ask it. 23 MR. HARVEY: Object to the form 24 of the question.</p> | <p>Page 85</p> <p>1 MR. LALLI: I'm asking her to 2 testify about general concepts in marketing 3 and advertising. 4 MR. HARVEY: I don't think you 5 are. I object to the form of the question 6 and this whole line of questioning. 7 THE WITNESS: Yeah, I think 8 you're -- you're trying to make a 9 generalized statement that isn't 10 necessarily relative to this particular 11 piece. Do marketing people tend to 12 simplify and extract the most prominent 13 words? I think they do. I think that's 14 the goal of marketing is to grab somebody's 15 attention. 16 So the qualifiers that would 17 grab somebody's attention would be 18 something that they would pick up on. But 19 obviously anything that is done still has 20 to be prequalified for what it's relative 21 to, meaning in this case if it's free, it 22 is free to purchase and we still have to 23 have that information on this piece. So 24 we're not doing it randomly, we're doing it</p> |

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| <p>Page 86</p> <p>1 with a purpose.</p> <p>2 BY MR. LALLI:</p> <p>3 Q. And, again, if free means no purchase</p> <p>4 fee, you don't know -- do you know why it just</p> <p>5 doesn't say no purchase fee on Exhibit-2?</p> <p>6 A. I really don't. That would -- I</p> <p>7 can't give you answers as to what the final</p> <p>8 decision was.</p> <p>9 Q. But it would have been made by the</p> <p>10 group of people that we spoke about previously,</p> <p>11 Dan Goldman and John?</p> <p>12 A. It would have been a collective</p> <p>13 decision.</p> <p>14 Q. Of those people?</p> <p>15 A. Uh-huh.</p> <p>16 Q. Anyone else that we haven't</p> <p>17 mentioned?</p> <p>18 A. Not that I know of.</p> <p>19 Q. The packaging, when I say the</p> <p>20 packaging of the card, I mean everything that the</p> <p>21 customer gets, the gift box, the ribbon, the terms</p> <p>22 and conditions, the trifold, and the card, itself,</p> <p>23 it's clear that the issue date of the card is not</p> <p>24 included on any of that -- any of those materials.</p> | <p>Page 88</p> <p>1 took place that she's not aware of --</p> <p>2 MR. LALLI: You can object --</p> <p>3 MR. HARVEY: I know, but that's</p> <p>4 just over the top.</p> <p>5 MR. LALLI: I started this off</p> <p>6 by saying I'm not the best wordsmith.</p> <p>7 MR. HARVEY: Okay.</p> <p>8 MR. LALLI: Let me try to</p> <p>9 reformulate my question.</p> <p>10 BY MR. LALLI:</p> <p>11 Q. Having the issue date somewhere in</p> <p>12 the materials of the card would constitute a</p> <p>13 change to the actual materials, the print</p> <p>14 materials, the terms and conditions, the trifold,</p> <p>15 correct?</p> <p>16 A. Possibly. It would depend on to what</p> <p>17 extent it was going to affect any of those</p> <p>18 materials.</p> <p>19 Q. Okay. And changes to those materials</p> <p>20 while you were leading this gift card program in</p> <p>21 your role, you would have -- they would have come</p> <p>22 to you, you would have seen changes to the</p> <p>23 materials, correct?</p> <p>24 MR. HARVEY: Object to the form</p> |
| <p>Page 87</p> <p>1 Do you agree with that?</p> <p>2 A. Issue date -- I'm not quite sure I</p> <p>3 understand what you mean by issue date.</p> <p>4 Q. The date on which the customer</p> <p>5 purchases the gift card.</p> <p>6 A. Not on those materials, no.</p> <p>7 Q. And it's not provided by the customer</p> <p>8 service representative in terms of a receipt</p> <p>9 that's also attached to the card or anything like</p> <p>10 that, right?</p> <p>11 A. I don't know that.</p> <p>12 Q. Do you know of any discussions as to</p> <p>13 whether or not to include, some way to include the</p> <p>14 issue date of the card on the materials?</p> <p>15 A. Not that I'm aware of.</p> <p>16 Q. If those discussions took place,</p> <p>17 would you be aware of them? Would you have been</p> <p>18 one of the people who would have been involved in</p> <p>19 them?</p> <p>20 MR. HARVEY: Object to the form</p> <p>21 of the question.</p> <p>22 THE WITNESS: Are you</p> <p>23 talking --</p> <p>24 MR. HARVEY: If discussions</p> | <p>Page 89</p> <p>1 of the question.</p> <p>2 BY MR. LALLI:</p> <p>3 Q. Do you understand the question?</p> <p>4 A. Well, I wasn't leading the program,</p> <p>5 so I just want to make sure I make that clear.</p> <p>6 Q. Yes.</p> <p>7 A. Changes to -- print materials that</p> <p>8 would have required changes, if it was relative to</p> <p>9 the greeting card insert, terms and conditions,</p> <p>10 would have come through me.</p> <p>11 Q. Okay.</p> <p>12 A. I would have seen the changes in</p> <p>13 order to effect the changes.</p> <p>14 Q. Okay. Were you part of -- when I say</p> <p>15 "part of," either with input or just being</p> <p>16 present, discussions about changes, any changes to</p> <p>17 the print materials that go along with the card?</p> <p>18 A. I'm not quite sure I understand.</p> <p>19 Changes relative to anything in particular?</p> <p>20 Q. Anything at all that goes with the</p> <p>21 card to the customer, and I'm talking about the</p> <p>22 trifold greeting card, the terms and conditions.</p> <p>23 A. My only involvement with the</p> <p>24 packaging for that particular piece was the</p> |

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| <p>1 greeting card insert that went into the piece. 2 Q. Okay. 3 A. Or into the box. 4 Q. So were you -- I guess I could just 5 ask it broadly. If there were a change to the 6 trifold, the greeting card -- okay? -- and if the 7 change was we're going to add a line, there was 8 lines, to, from, value, and message, we're going 9 to add a line that says, issue date -- are you 10 following me? 11 A. Uh-huh. 12 Q. -- if that change were to be made, 13 would that have come to you? 14 A. It would have come to me, yes. 15 Q. Would the discussion to make that 16 change involve you? And by "involve," I mean 17 either you're adding input or you're just brought 18 into the room. 19 MR. HARVEY: Object to the form 20 of the question. 21 But you can answer it, if you 22 understand it. 23 THE WITNESS: No, I wouldn't 24 have been involved in that.</p> | <p>1 would have said, "Look, I'd like to change this 2 word or put in this question." It primarily -- it 3 would have been started through Dan. 4 Q. But you don't recall any discussions 5 about including the issue date either on -- in any 6 materials, you know, included with the card, 7 itself? 8 A. No. 9 MR. LALLI: We're going to mark 10 this as Moncilioch-4. 11 (Document received and marked 12 for identification Plaintiffs' Exhibit 13 Moncilioch-4, Documents Bates-stamped 14 number TD000263 and TD000264, consisting of 15 2 pages.) 16 MR. HARVEY: Mike, one other 17 thing I meant to mention to you is that we 18 had told that we have the originals of some 19 of these materials that we're looking at 20 here, particularly trifolds and the inserts 21 in them, and you're free to -- this would 22 be the right witness to ask questions about 23 those. I don't have them in the room. I 24 can go get them if you want to do that.</p> |
| <p>Page 91</p> <p>1 BY MR. LALLI: 2 Q. Okay. Who would be involved? Would 3 it have been Dan Goldman, would it have been the 4 same people, same group of people we've been 5 speaking about today? 6 A. Possibly, but I couldn't -- I really 7 don't know. 8 Q. When we talked about terms and 9 conditions and disclosures, the only people who 10 you recalled who had made changes was either 11 Goldman or legal. 12 A. Correct. 13 Q. What about changes to the actual 14 greeting card, itself, where did those changes 15 come from? 16 A. When changes were made? 17 Q. Yes. 18 A. Are you asking me to speculate if 19 changes were made? 20 Q. No, no, no. I'm sorry. When 21 changes -- 22 A. When changes were made? 23 Q. Yes. 24 A. It would have been through Dan. Dan</p> | <p>Page 93</p> <p>1 MR. LALLI: Okay. 2 MR. HARVEY: So just let me 3 know. If you'd like that, I can get those 4 and you can examine them and she can 5 explain to you how they work. And they've 6 all been produced; these are just the 7 originals instead of copies. 8 MR. LALLI: Okay. I'm going to 9 ask that you do that. 10 MR. HARVEY: Okay. At the 11 break, I'll go get them. 12 BY MR. LALLI: 13 Q. This has been marked as Exhibit 14 Moncilioch-4, and it a document that's been 15 produced, it's Bates-stamped TD000263 to 264. Do 16 you recognize this document? 17 A. I had not seen it before having to 18 gather materials for this particular case. 19 Q. So the first time you saw it was when 20 you did your search, you were -- 21 A. When I had gotten -- when the agency 22 had provided this to Joan, and Joan had provided 23 it to me. 24 Q. So you didn't have any input into</p> |

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| <p>Page 94</p> <p>1 this at all?</p> <p>2 A. No.</p> <p>3 Q. And it never crossed your desk when</p> <p>4 it was used in 2006?</p> <p>5 A. No.</p> <p>6 Q. Okay. Then I'm not going to ask you</p> <p>7 any questions about it.</p> <p>8 To your knowledge, have there</p> <p>9 been any customer complaints regarding the</p> <p>10 gift card advertisements?</p> <p>11 A. Not to my direct knowledge, no.</p> <p>12 Q. When you say, "Not to my direct</p> <p>13 knowledge," what does that mean?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Would complaints about the</p> <p>16 advertising come to you?</p> <p>17 A. No.</p> <p>18 Q. Who would they go to?</p> <p>19 A. I really don't know. They may come</p> <p>20 through our call center, who may redirect them to</p> <p>21 somebody else, but that's pure speculation.</p> <p>22 Q. Have you ever received, either</p> <p>23 through the customer directly or through anyone at</p> <p>24 TD Bank customer, complaints about any of the work</p> | <p>Page 96</p> <p>1 THE WITNESS: Oh, I'm sorry.</p> <p>2 Yes, I believe so.</p> <p>3 BY MR. LALLI:</p> <p>4 Q. What is Beth Hogan's...</p> <p>5 A. You know, I don't know if this was</p> <p>6 one that I actually -- I'm not sure if this is one</p> <p>7 that I actually provided or someone from Banknorth</p> <p>8 provided.</p> <p>9 Q. That's fine. What is Beth Hogan's</p> <p>10 role? What's her position?</p> <p>11 A. She is a planner, marketing planner.</p> <p>12 Q. What does that mean?</p> <p>13 A. I couldn't give you a good definition</p> <p>14 of what that means other than they plan campaigns</p> <p>15 and programs for their particular line of product.</p> <p>16 In this case the debit card was Beth's line of</p> <p>17 product.</p> <p>18 Q. Is part of being a marketing planner</p> <p>19 having input into the actual...</p> <p>20 A. I don't know.</p> <p>21 Q. You don't know?</p> <p>22 A. Yeah.</p> <p>23 Q. If you look, it looks like you sent</p> <p>24 an email on July 16, 2008, to Beth. The subject</p> |
| <p>Page 95</p> <p>1 you've done?</p> <p>2 A. No, not that I recall.</p> <p>3 (Document received and marked</p> <p>4 for identification Plaintiffs' Exhibit</p> <p>5 Moncilioch-5, Documents Bates-stamped</p> <p>6 number TD001029 through TD001031,</p> <p>7 consisting of 3 pages.)</p> <p>8 BY MR. LALLI:</p> <p>9 Q. What's been marked as Moncilioch-5</p> <p>10 is an email that was -- or an email string that</p> <p>11 was produced to us. It's Bates stamped TD001029</p> <p>12 through 1031.</p> <p>13 A. Uh-huh.</p> <p>14 Q. Do you recognize this email string?</p> <p>15 A. Yes.</p> <p>16 Q. Is this one of the emails that was</p> <p>17 produced by you to counsel?</p> <p>18 A. This was -- my involvement in this</p> <p>19 string looks like it wasn't until I was asking a</p> <p>20 specific question of Beth Hogan, who is the debit</p> <p>21 card plan planner for TD Banknorth.</p> <p>22 MR. HARVEY: Ms. Moncilioch, I</p> <p>23 think his question was was this one of the</p> <p>24 documents you produced to counsel.</p> | <p>Page 97</p> <p>1 is: Re: forward: Gift card terms and conditions</p> <p>2 pricing change September '08.doc. Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you have an independent</p> <p>6 recollection of this email?</p> <p>7 A. Independent meaning?</p> <p>8 Q. Do you remember sending this email?</p> <p>9 A. I do.</p> <p>10 Q. Okay. Tell me about it.</p> <p>11 A. This was prior to Commerce Bank doing</p> <p>12 a rebrand to TD Bank before November of 2008, and</p> <p>13 I was working on finalizing the new design for the</p> <p>14 smaller trifold into the new green box, and</p> <p>15 TD Banknorth was also going to be doing the same</p> <p>16 designed piece just logo'ed with TD Banknorth and</p> <p>17 a few other changes, and one of the -- two other</p> <p>18 copy points that might have been slightly</p> <p>19 different than our card would have been, and also</p> <p>20 their terms and conditions were different than our</p> <p>21 terms and conditions. And my question to her in</p> <p>22 just proofreading her terms and conditions that</p> <p>23 she had provided was why they noted the State of</p> <p>24 Maine as being the governing charter and not</p> |

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| 1 Delaware, which is what TD Bank had been under was 2 Delaware, and that was my only question. 3 MR. HARVEY: May I point out to 4 the witness, in case she's not aware, the 5 word, redacted, there at the bottom of 6 Page 1029 and at the top of the Page 1029 7 means that there was additional information 8 here that has been obliterated so the 9 plaintiffs couldn't see it, and it was 10 obliterated, or redacted as we say, based 11 on -- because there was something in there 12 that revealed an attorney-client privileged 13 information. 14 THE WITNESS: Okay. 15 MR. HARVEY: And you 16 shouldn't -- you should not disclose -- 17 THE WITNESS: Right. 18 MR. HARVEY: -- anything 19 relating to communications with attorneys. 20 So I'm just cautioning you on that and 21 clarifying. 22 THE WITNESS: Okay. 23 BY MR. LALLI: 24 Q. The only issue, really, for this | 1 break. 2 MR. HARVEY: Okay. 3 MR. LALLI: Get the trifolds, 4 and I'll have a few questions, not much. 5 (At this time, a recess was 6 taken.) 7 MR. HARVEY: I'm not going to 8 identify everything in here, but we've got 9 a card and a series of greeting card 10 inserts, and then some I believe these are 11 card carriers, and I'll keep them together 12 through this litigation. These all came 13 from Ms. Moncilovich, I believe, and we'll 14 just hang onto them in case anybody ever 15 needs to refer to one of these originals. 16 Ms. Moncilovich can identify 17 with these documents where they are and 18 which of these -- with the Bates numbers on 19 them. If you have any questions or you 20 want to see in particular about how the 21 greeting card inserts worked before we 22 had -- before TD Bank had the smaller 23 insert, greeting card that it uses today, 24 Commerce Bank had the larger greeting |
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| 1 email was that the terms and conditions had Maine? 2 A. TD Banknorth cited Maine, ours sited 3 Delaware, and I wanted to confirm if that was 4 correct or incorrect. 5 Q. Okay. And it looks like a few other 6 people were included on this email string. One is 7 Karen Mayo. 8 A. Uh-huh. 9 Q. Who's Karen Mayo? 10 A. Karen worked -- she worked for 11 TD Banknorth, and today works for TD Bank in the 12 product group. I don't know her specific title. 13 Q. Do you know why she would have been 14 copied on this email? 15 A. She -- I believe she works with the 16 debit product, that's why she most likely would 17 have been copied on this. 18 Q. Another person copied is Pattie 19 Gallant. We spoke about her previously. 20 A. Uh-huh. 21 Q. Those are the only questions I have 22 about that. 23 A. Okay. 24 MR. LALLI: Let me take a | 1 cards, feel free to inspect and examine and 2 ask the witness questions about them. 3 MR. LALLI: Okay, thanks. 4 BY MR. LALLI: 5 Q. Before I get to this, let me just ask 6 about this declaration that you provided prior to 7 today's deposition. Why did you create this? It 8 seems like it was a lot of work. 9 MR. HARVEY: Obviously it was 10 created at the request of counsel. 11 THE WITNESS: Right. 12 MR. HARVEY: So I don't think 13 she can answer that question. 14 MR. LALLI: Okay. 15 THE WITNESS: Yeah. 16 BY MR. LALLI: 17 Q. And this was created through the -- 18 you going out and asking coworkers and outside 19 vendors for documents and -- 20 A. Personal files. 21 Q. -- personal files, which we spoke 22 about before, right? 23 A. Yes. 24 Q. And all of the information here is |

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| <p>Page 102</p> <p>1 true and accurate to the best of your knowledge?</p> <p>2 A. Yes.</p> <p>3 Q. That's all I have.</p> <p>4 Now I'm holding one of the</p> <p>5 greeting cards that was used by Commerce Bank.</p> <p>6 There's a sticky on it that says December '04.</p> <p>7 And it's a trifold, and there's a pull-out for</p> <p>8 terms and conditions. Is that fair and accurate?</p> <p>9 A. Yes.</p> <p>10 Q. My first question is who creates the</p> <p>11 actual greeting card, itself, not the terms and</p> <p>12 conditions.</p> <p>13 A. The design of it?</p> <p>14 Q. No, no, no. Who actually produces</p> <p>15 the greeting card?</p> <p>16 A. Prints it?</p> <p>17 Q. Yes.</p> <p>18 A. It would have been a printer that</p> <p>19 would have printed it. In this case it was</p> <p>20 Capital Printing.</p> <p>21 Q. Who prints the terms and conditions?</p> <p>22 A. The same vendor since it's all done</p> <p>23 at the same time.</p> <p>24 Q. How, if you know, how are the</p> | <p>Page 104</p> <p>1 printer, the greeting card is closed, and they're</p> <p>2 packaged complete with the terms and conditions</p> <p>3 inside in packages of twenty-five --</p> <p>4 A. Yes.</p> <p>5 Q. -- shrink-wrapped, and then sent out</p> <p>6 to a central depository?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Just to be clear, the terms</p> <p>9 and conditions aren't packaged separate and</p> <p>10 apart --</p> <p>11 A. No.</p> <p>12 Q. -- from the gift card?</p> <p>13 A. No.</p> <p>14 Q. Okay. And that's true for --</p> <p>15 A. All of them.</p> <p>16 Q. -- all of them?</p> <p>17 Yes?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know why the terms and</p> <p>20 conditions are in a pouch?</p> <p>21 A. That was just the way the design was</p> <p>22 finalized and approved by everybody. There were a</p> <p>23 certain amount of content information that we</p> <p>24 wanted to include, and the agency had developed a</p> |
| <p>Page 103</p> <p>1 greeting cards and the terms and conditions -- and</p> <p>2 I'm not just speaking specifically to this one,</p> <p>3 but --</p> <p>4 A. Any of them.</p> <p>5 Q. -- any of them, how are they sent</p> <p>6 from the printer to banks?</p> <p>7 A. That terms and conditions piece is</p> <p>8 collated into that card before it gets</p> <p>9 shrink-wrapped in groups of twenty-five is how we</p> <p>10 produce them, so it is already assembled, and that</p> <p>11 gets shipped to our warehouse facility, which is</p> <p>12 Standard Register, and then when banks requisition</p> <p>13 supplies or if we were to do a distribution, it</p> <p>14 would come in the preshrunk packs of twenty-five,</p> <p>15 so they are all together.</p> <p>16 Q. When you say the terms and conditions</p> <p>17 are collated with the...</p> <p>18 A. They're collated into that piece.</p> <p>19 Q. -- into the piece, do you mean that</p> <p>20 they are --</p> <p>21 A. When you just took it out of the</p> <p>22 pocket, yes.</p> <p>23 Q. You mean they are placed, the terms</p> <p>24 and conditions are placed in the pocket by the</p> | <p>Page 105</p> <p>1 layout and that was the suggested one that was</p> <p>2 approved.</p> <p>3 Q. The agency being the outside agency?</p> <p>4 A. Tierney, yes.</p> <p>5 Q. And it was approved by the people we</p> <p>6 spoke of before?</p> <p>7 A. Yeah.</p> <p>8 Q. Dan Goldman?</p> <p>9 A. Dan, Allegra, John reviewed that.</p> <p>10 Those are the only ones that I know of.</p> <p>11 Q. For the printing company to produce</p> <p>12 something like this -- I'm sorry, let me back up.</p> <p>13 For the design outfit to design something like</p> <p>14 this, what needed to be provided to them?</p> <p>15 A. We would provide -- well, obviously</p> <p>16 the document for the terms and conditions.</p> <p>17 Q. Okay.</p> <p>18 A. And any specific information that Dan</p> <p>19 would have wanted to include, and he wanted to</p> <p>20 include, for example, the frequently asked</p> <p>21 questions, he wanted to include the phone number</p> <p>22 and the -- let me just check. The URL I think is</p> <p>23 on here, as well. That was a later one. This was</p> <p>24 the phone number one. At the time we must not</p> |

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| <p>1 have had a URL. 2 Q. Okay. 3 A. So obviously the phone number to 4 register. He would have provided bits of 5 information that said here's what I'd like to 6 include. The agency -- I would have sent that 7 information to the agency, also include a panel 8 for a message to be put, and taking all of that 9 together, came up with an option that would 10 accommodate all of those needs.</p> <p>11 Q. Would Dan have decided that the terms 12 and conditions should be in a pouch?</p> <p>13 A. I don't think so. I think that was 14 just the nature of the design. I mean it happened 15 to work out that way, since, one, you want to keep 16 it as contained as we can, obviously to -- it 17 would have been difficult to put those terms and 18 conditions anywhere else on this piece. We don't 19 want to make it -- it would have not been 20 something we want to make too cumbersome, we 21 wouldn't want it extended even longer, because 22 obviously that doesn't make for a packaged, 23 completed look. So this was obviously a nice 24 compromise.</p> | <p>1 it? 2 A. No. 3 Q. Okay. This particular one, the 4 larger Commerce gift card greeting card, was this 5 placed in a box, a gift packaged box? 6 A. It would have been placed -- when a 7 customer purchased a card, the card would have 8 gone in the greeting box, and they would have 9 taken a greeting card and also placed that in the 10 box on top of it, and then closed the box and 11 placed the ribbon on it. 12 Q. So at some point in time, the boxes 13 were bigger than they are today, the gift boxes? 14 A. That was a large red box, the 15 Commerce boxes were red boxes that fit that size. 16 Q. And then at some point -- 17 A. They went to the smaller, yeah. 18 Q. -- they went to the smaller boxes. 19 Now I'm holding what Steve 20 described as or you described as card carriers? 21 A. Yes. 22 Q. What's a card carrier? 23 A. These would have been used for 24 mail order cards, and a card would have been</p> |
| <p>Page 107</p> <p>1 Q. Okay. So it may have -- to your 2 understanding, did that idea come from the ad 3 agency? 4 A. I believe so. 5 Q. And then it looks like that idea, 6 meaning the terms and conditions, slid inside a 7 pouch -- 8 A. It stayed with everything. 9 Q. -- it looks like it was followed 10 through -- let me finish. I'm sorry. 11 A. I'm sorry. 12 Q. It looks like it was followed through 13 to present day; is that correct? 14 A. Yes. 15 Q. Do you have any reason to believe 16 that the banks, when they receive these packaged 17 greeting cards, would pull out the terms and 18 conditions, store them separately from the 19 greeting cards? 20 A. Do I have any reason to believe that 21 they -- why they would do that? 22 Q. Or that they would do that. 23 A. No. 24 Q. That doesn't make much sense, does</p> | <p>Page 109</p> <p>1 attached here, and then sent through the mail. 2 Q. Using like that gum, sticky gum 3 stuff? 4 A. Right. 5 Q. And is this the only -- what else 6 would have been sent in the mail to the customer 7 besides this page with the card stuck onto it? 8 A. That, I don't know. I don't believe 9 there was anything else, but I don't want to 10 speculate on that. 11 Q. It would have just been a single 12 card? 13 A. I believe so. 14 MR. HARVEY: Just to be clear, 15 Mike, when you were referring to those card 16 carriers, the terms and conditions are on 17 the back of those card carriers. 18 MR. LALLI: Yes. 19 BY MR. LALLI: 20 Q. Did Commerce or TD Bank at any time 21 use a greeting card that didn't have the pouched 22 terms and conditions? 23 A. Commerce never did, and in my 24 experience so far with TD Bank, they have the same</p> |

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| <p>1 pouch, as well, and never have they had anything 2 else as far as -- that's as far as TD Bank. I 3 can't speak for TD Banknorth.</p> <p>4 Q. Sure. Any discussions that a 5 consumer may not see the terms and conditions?</p> <p>6 A. Discussions with?</p> <p>7 Q. Anyone.</p> <p>8 A. Anybody? Not to my knowledge.</p> <p>9 Q. That was never a worry?</p> <p>10 A. No.</p> <p>11 Q. Let me just go through my notes. 12 Just to I guess clarify and 13 finalize your role with the gift card program and 14 these materials --</p> <p>15 A. Okay.</p> <p>16 Q. -- other than the proofreading edits 17 you would have made to the terms and conditions -- 18 which we talked about.</p> <p>19 A. Yes.</p> <p>20 Q. -- have you ever made any changes or 21 suggested any changes to any of the materials?</p> <p>22 A. To any of the disclosure materials or 23 the terms and conditions materials specifically?</p> <p>24 Q. We'll start with the terms and</p> | <p>1 sentence is structured correctly.</p> <p>2 Q. Okay. What else?</p> <p>3 A. Punctuation. It would not have been 4 anything that was specific to the operation or 5 process of the program.</p> <p>6 Q. So not really the content of it; just 7 the wording?</p> <p>8 A. Exactly.</p> <p>9 Q. Okay. Have you ever made or 10 suggested any changes to any of the poster 11 advertisements?</p> <p>12 A. No.</p> <p>13 Q. Any of the -- I'll make it broader. 14 Any advertisements, really, to gift cards?</p> <p>15 A. No.</p> <p>16 Q. Never suggested a change?</p> <p>17 A. No. Not content change, if that's 18 what you're referring to.</p> <p>19 Q. Okay.</p> <p>20 A. Is that what you're referring to?</p> <p>21 Q. Well, what changes other than content 22 would you have made?</p> <p>23 A. Again, it would be more grammatical 24 and punctuation than anything else.</p> |
| <p>1 conditions first. Other than the proofreading 2 edits, have you ever suggested any changes?</p> <p>3 A. No.</p> <p>4 Q. Regarding the disclosures located on 5 the back of the card, have you ever suggested any 6 changes other than that email with the Maine?</p> <p>7 A. That email with the Maine was 8 relative to the terms and conditions, not relative 9 to that.</p> <p>10 Q. Okay. I apologize for that. So --</p> <p>11 A. No.</p> <p>12 Q. No, you never suggested any changes 13 to the disclosures located on the back of the 14 card?</p> <p>15 A. No.</p> <p>16 Q. Have you ever suggested any changes 17 to the form of the -- the form or the content 18 located on the greeting card, the trifold?</p> <p>19 A. It would only have been language or 20 grammatical changes, it wouldn't have been 21 anything relative to the specific content.</p> <p>22 Q. When you say language, do you mean 23 grammar or do you mean --</p> <p>24 A. It could have been grammar so the</p> | <p>1 MR. LALLI: Okay. Those are 2 all the questions I have for you.</p> <p>3 MR. HARVEY: Mike, you didn't 4 show her the deposition notice. This 5 witness was produced today under the 6 corporate designee notice of deposition in 7 the two lawsuits, the Mann and the 8 Mwantembe lawsuits to testify about 9 advertising and marketing and all the 10 materials that are covered by her 11 declaration and all the things that were 12 provided to the customers, terms and 13 conditions, backs of cards, et cetera.</p> <p>14 MR. LALLI: I understand that 15 she was brought here to testify on topics 16 G, L, and maybe I.</p> <p>17 MR. HARVEY: I need to look at 18 it again. It was all the topics I -- it 19 was all the things that are covered in her 20 declaration.</p> <p>21 MR. LALLI: That's fair.</p> <p>22 MR. HARVEY: I just have a 23 couple questions for the witness.</p> <p>24 BY MR. HARVEY:</p> |

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| <p>Page 114</p> <p>1 Q. Would you please turn to the -- your 2 declaration. And I note that you just finalized 3 this this morning, but it occurred to me there's 4 something that's just slightly unclear in 5 paragraph 4A. If you would read paragraph 4A, 6 just read it to yourself, please.</p> <p>7 A. Okay.</p> <p>8 Okay.</p> <p>9 Q. So if I understand this correctly, 10 what you're saying is that this card, the one that 11 you've referred to here by Bates number is the 12 very first plastic that Commerce Bank ever used?</p> <p>13 A. Yes.</p> <p>14 Q. And it didn't -- you call it the 15 generic card in that it doesn't have a holiday 16 scene or something like that, right?</p> <p>17 A. Correct.</p> <p>18 Q. And whenever you have a card that 19 doesn't have a holiday scene on it, you refer to 20 that as the generic card.</p> <p>21 A. Yes.</p> <p>22 Q. And generic cards generally means 23 that they're not used in the November to January 24 holiday season.</p> | <p>Page 116</p> <p>1 2 3 4 5 I, LISE L. MONCILovich, have read the 6 foregoing transcript of my deposition 7 given on Thursday, April 1, 2010, 8 consisting of 115 pages, and it is true, 9 correct, and complete to the best of my 10 knowledge, recollection, and belief, except 11 for the list of corrections, if any, 12 attached on a separate sheet herewith.</p> <p>13 14 15 16 17 LISE L. MONCILovich</p> <p>18 19 20 21 22 Witness</p> <p>23 24</p> |
| <p>Page 115</p> <p>1 A. The generic card could be used during 2 the holiday season as well as the holiday card.</p> <p>3 Q. I see. But you put out a specific 4 holiday card.</p> <p>5 A. Yes, we do.</p> <p>6 Q. Okay. Now, in holiday season 2004, 7 however, isn't it correct that this generic card 8 was the card that was used for holiday season 9 2004?</p> <p>10 A. Yes.</p> <p>11 Q. So that was just a little unclear in 12 paragraph 4A, so we've clarified that now. 13 Thank you.</p> <p>14 A. Right.</p> <p>15 ----</p> <p>16 (DEPOSITION CONCLUDED)</p> <p>17 (1:52 p.m.)</p> <p>18 ----</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> | <p>Page 117</p> <p>1 C E R T I F I C A T E</p> <p>2 3 4 I, FRANCINE K. GUOKAS, RPR, and 5 Notary Public for the Commonwealth of 6 Pennsylvania, do hereby certify that the 7 proceedings, evidence, and objections noted are 8 contained fully and accurately in the notes taken 9 by me of the preceding deposition and that this 10 copy is a correct transcript of the same.</p> <p>11 12 I further certify that I am not an 13 attorney or counsel of any of the parties; nor a 14 relative or employee of any attorney or counsel 15 connected with the action, nor financially 16 interested in the outcome of the same.</p> <p>17 18 FRANCINE K. GUOKAS, RPR 19 Notary Public</p> <p>20 21</p> <p>22 NOTE: The certification appended hereto does not 23 apply to any reproduction of same unless under the 24 direct control and/or supervision of the certifying court reporter.</p> |